

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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Hearing Date: 8/9/06



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STAFF REPORT: AMENDMENT

APPLICATION NO: 5-88-794-A4

APPLICANT: Bert Kelley

PROJECT LOCATION: 26520 Latigo Shore Drive; Malibu, Los Angeles County

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED: Subdivision of a 37,130 sq. ft. lot into three parcels and construction of three single family residences.

DESCRIPTION OF AMENDMENT: Request for after-the-fact approval for the following development on the single, westernmost parcel of the previously approved three-lot subdivision at 26520 Latigo Shore Drive (Parcel 4460-019-143): (1) relocation of the 4,615 sq. ft. residence and septic system approximately 10 ft. further seaward consistent with their as-built location; (2) an as-built soldier pile/grade beam retaining wall (consisting of 20 soldier piles) along western property line; (3) an as-built 6 ft. high concrete block wall on top of the soldier pile retaining wall; (4) an as-built 6 ft. high concrete block wall between the residence and Latigo Shore Drive; (5) an as-built concrete slab; (6) an as-built exterior non-structural framing/walls around existing caissons and concrete pad; (7) an as-built railroad tie stairway; and (8) an unspecified amount of grading for the as-built flat pad area located under the bottom floor of the residence where the concrete slab is located and new proposed grading to remove a portion of the unpermitted fill slope and flat pad area where the existing unpermitted lawn is located. In addition, this amendment includes the request that Special Condition Seven of Coastal Development Permit 5-88-794 be revised to delete the restriction that prohibits development "under the floors or seaward of the existing structures."

LOCAL APPROVALS RECEIVED: City of Malibu Approval in Concept.

SUBSTANTIVE FILE DOCUMENTS: Engineering Report Letter, by Delta Engineering Services – undated (submitted on 7/14/06); Several Soils and Engineering-Geologic Reports and Updates by GeoSystems dated 10/25/05, 10/18/00, 3/17/00, 12/24/98, 9/30/97, 2/17/97, 2/9/96, 8/22/90, 8/13/90, 5/23/90, 2/28/90, 12/5/89, 11/7/88, 3/4/88, 2/12/88, 1/27/88, 7/21/87, and 6/23/86; Wave Uprush Report and Updates by David C. Weiss Structural Engineer & Associates dated 2/6/00, 10/26/99, and 11/21/88; California State Lands Commission Determination dated May 6, 1998; CDP 5-87-706 (Lachman); CDP 5-88-794, A1, A2, & A3 (Lachman, Preferred Financial CDP 4-97-168 & 169 (Shears); and Cease and Desist Order (CCC-05-CD-05), Executive Director Cease and Desist Order (ED-05-CD-01), and Recorded Notice of Violation (CCC-05-NOV-03).

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission approve a portion of the proposed development and deny the remaining portion by adopting the following two-part resolution:

Part 1: Approve the request for after-the-fact approval of: (1) relocation of the 4,615 sq. ft. residence and septic system approximately 10 ft. further seaward consistent with their as-built location; (2) an as-built soldier pile/grade beam retaining wall (consisting of 20 soldier piles) along western property line; (3) an as-built 6 ft. high concrete block wall on top of the soldier pile retaining wall; and (4) an as-built 6 ft. high concrete block wall between the residence and Latigo Shore Drive.

Part 2: Deny the request for: (1) after-the-fact approval of an as-built concrete slab; (2) after-the-fact approval of as-built non-structural framing/walls around existing caissons and concrete pad; (3) after-the-fact approval of as-built railroad tie stairway; (4) unspecified amount of grading for the as-built flat pad area located under the bottom floor of the residence where the concrete slab is located and new proposed grading to remove a portion of the unpermitted fill slope and flat pad area where the existing unpermitted lawn is located; and (5) the request that Special Condition Seven of Coastal Development Permit 5-88-794 be revised to delete the restriction that prohibits development "under the floors or seaward of the existing structures."

In addition, staff is recommending that the portion of the development to be approved be subject to seven (7) special conditions regarding submittal of revised plans, landscaping, assumption of risk, no future shoreline protective devices, future, improvements, recordation of a general deed restriction, and condition compliance.

Staff Note:

The standard of review for the proposed project is the policies and provisions of the adopted Malibu Local Coastal Program and the sections of the Coastal Act regarding public access. **Due to permit streamlining act requirements, the Commission must act upon this permit amendment application at the August 2006 Commission hearing.**

I. STAFF RECOMMENDATION

The staff recommends that the Commission adopt the following resolution:

MOTION: *I move that the Commission adopt the staff recommendation for the proposed amendment to Coastal Development Permit 5-88-794-A4 by adopting the two-part resolution set forth in the staff report.*

STAFF RECOMMENDATION OF APPROVAL IN PART AND DENIAL IN PART

Staff recommends a **YES** vote on the following motion. This will result in the adoption of the following two-part resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION:

Part 1: Approval with Conditions of a Portion of the Development

The Commission hereby **approves** the portion of the proposed coastal development permit amendment consisting of after-the-fact approval of: **(1) relocation of the 4,615 sq. ft. residence and septic system approximately 10 ft. further seaward consistent with their as-built location; (2) an as-built soldier pile/grade beam retaining wall (consisting of 20 soldier piles) along western property line; (3) an as-built 6 ft. high concrete block wall on top of the soldier pile retaining wall; and (4) an as-built 6 ft. high concrete block wall between the residence and Latigo Shore Drive** on the grounds that the development, as amended and subject to conditions, will be in conformity with the policies of Chapter 3 of the Coastal Act and with the Malibu Local Coastal Program. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

Part 2: Denial of the Remainder of the Development

The Commission hereby **denies** the portion of the proposed coastal development permit amendment consisting of: **(1) after-the-fact approval of an as-built concrete slab; (2) after-the-fact approval of as-built non-structural framing/walls around existing caissons and concrete pad; (3) after-the-fact approval of as-built railroad tie stairway; (4) unspecified amount of grading for the as-built flat pad area located under the bottom floor of the residence where the concrete slab is located and new proposed grading to remove a portion of the unpermitted fill slope and flat pad area where the existing unpermitted lawn is located; and (5) the request that Special Condition Seven of Coastal Development Permit 5-88-794 be revised to delete the restriction that prohibits development “under the floors or seaward of the existing structures”** on the grounds that the development, as

amended, will not conform with the policies of Chapter 3 of the Coastal Act and the Malibu Local Coastal Program. Approval of the amendment would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the amended development on the environment.

II. SPECIAL CONDITIONS.

NOTE: Unless specifically altered by the amendment, all standard conditions and Special Conditions attached to the previously approved Coastal Development Permit 5-88-794 remain in effect. In addition, the following new/revised special conditions are hereby imposed, only as they relate to the subject parcel that is subject to this amendment at 26530 Latigo Shore Drive (APN 4460-019-143). The original terms and conditions shall continue to apply to Parcels 4460-019-144 and 4460-019-145).

1. Revised Plans

Prior to the issuance of this amendment, the applicant shall submit, for the review and approval of the Executive Director, revised project plans which shall only show the development on the subject parcel (APN 4460-019-143) which has been approved pursuant to this amended permit and which shall also show that the following development has been deleted in its entirety: (1) as-built concrete slab, (2) as-built exterior non-structural framing around existing caissons and concrete slab, (3) all proposed grading seaward or below the residence, including, but not limited to construction of a fill slope and flat yard area on the sandy beach or under the lower level of the residence, (4) all lawn area seaward of the residence, (5) the as-built stairway, (6) any modifications/changes to the previously recorded lateral and vertical public access easements on the subject site, and (7) all development on Parcel 4460-019-025. In addition, the revised plans may also provide for the construction of a new public access stairway consistent with the location shown on the previously approved plans of CDP 5-88-794. The public access stairs shall be located within the footprint of the recorded vertical public access easement and shall be designed in consultation with *Access For All*.

2. Landscaping and Erosion Control Plans

Prior to issuance of the coastal development permit amendment, the applicant shall submit landscaping and erosion control plans, prepared by a licensed landscape architect or a qualified resource specialist, for review and approval by the Executive Director. The landscaping and erosion control plans shall be reviewed and approved by the consulting engineering geologist to ensure that the plans are in conformance with the consultants' recommendations. The plans shall incorporate the criteria set forth below. All development shall conform to the approved landscaping and erosion control plans:

A) Landscaping Plan

- 1) All graded & disturbed areas on the subject site shall be planted and maintained for erosion control purposes within (60) days after issuance of the amendment. To minimize the need for irrigation all landscaping shall consist primarily of native/drought resistant plants appropriate for coastal bluffs as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended List of Plants for Landscaping in the Santa Monica Mountains, dated October 4, 1994. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property.
- 2) All cut and fill slopes shall be stabilized with planting at the completion of final grading. Planting should be of native plant species indigenous to the Santa Monica Mountains using accepted planting procedures, consistent with fire safety requirements. Such planting shall be adequate to provide 90 percent coverage within two (2) years, and this requirement shall apply to all disturbed soils;
- 3) Plantings will be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape requirements;
- 4) The Permittee shall undertake development in accordance with the final approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Coastal Commission - approved amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.
- 5) Vegetation within 20 feet of the proposed house may be removed to mineral earth, vegetation within a 200-foot radius of the main structure may be selectively thinned in order to reduce fire hazard. However, such thinning shall only occur in accordance with an approved long-term fuel modification plan submitted pursuant to this special condition. The fuel modification plan shall include details regarding the types, sizes and location of plant materials to be removed, and how often thinning is to occur. In addition, the applicant shall submit evidence that the fuel modification plan has been reviewed and approved by the Forestry Department of Los Angeles County. Irrigated lawn, turf and ground cover planted within the twenty foot radius of the proposed house shall be selected from the most drought tolerant species or

subspecies, or varieties suited to the Mediterranean climate of the Santa Monica Mountains.

- 6) Rodenticides containing any anticoagulant compounds (including, but not limited to, Warfarin, Brodifacoum, Bromadiolone or Diphacinone) shall not be used.

B) Interim Erosion Control Plan

- 1) The plan shall delineate the areas to be disturbed by grading or construction activities and shall include any temporary access roads, staging areas and stockpile areas. The natural areas on the site shall be clearly delineated on the project site with fencing or survey flags.
- 2) The plan shall specify that should grading take place during the rainy season (November 1 – March 31) the applicant shall install or construct temporary sediment basins (including debris basins, desilting basins or silt traps), temporary drains and swales, sand bag barriers, silt fencing, stabilize any stockpiled fill with geofabric covers or other appropriate cover, install geotextiles or mats on all cut or fill slopes and close and stabilize open trenches as soon as possible. These erosion measures shall be required on the project site prior to or concurrent with the initial grading operations and maintained through out the development process to minimize erosion and sediment from runoff waters during construction. All sediment should be retained on-site unless removed to an appropriate approved dumping location either outside the coastal zone or to a site within the coastal zone permitted to receive fill.
- 3) The plan shall also include temporary erosion control measures should grading or site preparation cease for a period of more than 30 days, including but not limited to: stabilization of all stockpiled fill, access roads, disturbed soils and cut and fill slopes with geotextiles and/or mats, sand bag barriers, silt fencing; temporary drains and swales and sediment basins. The plans shall also specify that all disturbed areas shall be seeded with native grass species and include the technical specifications for seeding the disturbed areas. These temporary erosion control measures shall be monitored and maintained until grading or construction operations resume.

C) Monitoring.

Five years from the date of the issuance of this amendment, the applicant shall submit for the review and approval of the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies the on-site landscaping is in conformance with the landscape plan approved pursuant to this Special Condition. The monitoring

report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the applicant, or successors in interest, shall submit a revised or supplemental landscape plan for the review and approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or a qualified Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

3. Assumption of Risk

By acceptance of this amendment, the applicant acknowledges and agrees (i) that the subject site may be subject to hazards from waves, flooding, landslide, liquefaction, bluff retreat, erosion, and wildfire; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement.
such hazards.

4. No Future Shoreline Protective Device

Special Condition Number Eight (8) of the underlying Coastal Development Permit 5-88-794 shall be superceded and replaced in its entirety with the following language (Note: the modification/replacement of this condition shall only apply to the project site that is the subject of Coastal Development Permit Amendment 5-88-794-A4 at 26530 Latigo Shore Drive, APN 4460-019-143. The original terms and conditions shall continue to apply to Parcels 4460-019-144 and 4460-019-145):

- A. By acceptance of the amendment, the applicant/landowner agrees, on behalf of itself and all successors and assignees, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to this amended coastal development permit including, but not limited to, the residence, driveway, patios/decks, walkways, any graded slope areas, septic system, and any other future improvements in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, landslides, liquefaction, or any other natural hazards in the future. By acceptance of this permit, the applicant/landowner hereby waives, on behalf of itself and all successors and

assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.

- B. By acceptance of this amendment, the applicant/landowner further agrees, on behalf of itself and all successors and assigns, that the landowner shall immediately notify the Executive Director, in writing, whether any portion of the as-built soldier pile/grade beam retaining wall (consisting of 20 soldier piles with grade-beams) located on the sandy beach becomes exposed above grade due to wave action, erosion, storm conditions, liquefaction, landslide, or earth movement.
- C. By acceptance of this amendment, the applicant/landowner further agrees, on behalf of itself and all successors and assigns, to remove any portion of the as-built soldier pile/grade beam retaining wall (consisting of 20 soldier piles with grade beams) that is located on the sandy beach and which becomes exposed above grade due to wave action, erosion, storm conditions, liquefaction, landslide, or earth movement and which the Executive Director determines may constitute a potential hazard or obstacle to public access along the beach. Removal may be limited to the portion of the pile/grade-beam that is exposed above grade. Portions of the wall that are not exposed may remain. Such removal shall require a coastal development permit or an amendment to this coastal permit.

5. Future Development Restriction

Special Condition Number Seven (7) of the underlying Coastal Development Permit 5-88-794 shall be superceded and replaced in its entirety with the following language (Note: the modification/replacement of this condition shall only apply to the project site that is the subject of Coastal Development Permit Amendment 5-88-794-A4 at 26530 Latigo Shore Drive, APN 4460-019-143. The original terms and conditions shall continue to apply to Parcels 4460-019-144 and 4460-019-145):

- A. This permit, as amended, is only for the development described in Coastal Development Permit No. 5-88-794, as amended. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code section 30610(a) shall not apply to the entire property. Accordingly, any future improvements on the property, including but not limited to repair and maintenance identified as requiring a permit in Public Resources section 30610(d) and Title 14 California Code of Regulations sections 13250(a)-(b) shall require an amendment to Coastal Development Permit No. 5-88-794 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.
- B. No permanent improvements shall be constructed within the geologic setback area or under the floor/lowest approved level of the residence or seaward of the existing structures with the exception of: (1) one path or stairway within the footprint of the previously recorded public vertical access easement, (2) the

soldier pile/grade beam retaining wall (consisting of 20 soldier piles) along the western property line, and (3) the 6 ft. high concrete block wall on top of the soldier pile retaining wall along the western property line; noted on the present approved plans.

6. Deed Restriction

PRIOR TO ISSUANCE OF THIS AMENDMENT, the applicant shall submit to the Executive Director, for review and approval, documentation demonstrating that the applicant and landowner(s) have executed and recorded against the parcel governed by this amendment a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this amended permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing all Standard and Special Conditions of this amended permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

7. Condition Compliance

Within 90 days of Commission action on this coastal development permit amendment application, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this amendment. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

III. FINDINGS AND DECLARATIONS

A. Amendment Description and Background

The applicant requests after-the-fact approval for the following development on the single, westernmost parcel of the previously approved three-lot subdivision at 26520 Latigo Shore Drive (Parcel 4460-019-143): (1) relocation of the 4,615 sq. ft. residence and septic system approximately 10 ft. further seaward consistent with their as-built location; (2) an as-built soldier pile/grade beam retaining wall (consisting of 20 soldier piles) along western property line; (3) an as-built 6 ft. high concrete block wall on top of the soldier pile retaining wall; (4) an as-built 6 ft. high concrete block wall between the residence and Latigo Shore Drive; (5) an as-built concrete slab; (6) an as-built exterior non-structural framing/walls around existing caissons and concrete pad; (7) an as-built railroad tie stairway; and (8) an unspecified amount of grading for the as-built flat pad area located under the bottom floor of the residence where the concrete slab is located and new proposed grading to remove a portion of the unpermitted fill slope and flat pad area where the existing unpermitted lawn is located. In addition, this amendment includes the request that Special Condition Seven of Coastal Development Permit 5-88-794 be revised to delete the restriction that prohibits development “under the floors or seaward of the existing structures.”

The subject site is a beachfront lot (APN 4460-019-143) located along Latigo Shore Drive in the City of Malibu (as shown on Exhibits 1 and 2). The project site is visible from Pacific Coast Highway, Latigo Shore Drive, and the sandy beach. The site is located approximately 100 ft. to the east (downcoast) of two vacant undeveloped beachfront parcels owned by Los Angeles County and approximately 500 feet west (upcoast) of Dan Blocker State Beach (there are no formal improved accessways located on either this portion of Dan Blocker State Beach or the two County-owned parcels). In addition, there is an existing stairway on the bluff slope at the eastern (downcoast) end of Latigo Shore Drive approximately 380 ft. to the east of the subject site which provides access from Latigo Shore Drive to the sandy beach. This stairway was constructed pursuant to the Commission’s approval of Coastal Development Permit 5-85-299 (Young and Golling) which also required that property owner to record an offer to dedicate a vertical public access easement to allow the public for the stairway access. However, this offer to dedicate the vertical public access easement on the public accessway located to the east of the subject site has not yet been accepted by any government agency or private association for maintenance and operation.

In addition, easements for both vertical and lateral public access on and across the subject parcel have been recorded (as shown on Exhibit 3). The lateral public access easement is located along the sandy beach portion of the subject lot between the mean high tide line and the approximate toe of the bluff. The vertical public access easement is located on the western (upcoast) side of the property and extends from the northern property boundary to the mean high tide line to the south. Both the vertical and lateral public access easements were accepted by *Access For All* on September 23, 2004.

However, although the vertical public access easement on the subject property has been accepted, *Access For All* has not yet been able to actually open and operate the easement because an unpermitted concrete block wall and residential landscaping (a lawn and privacy hedge with trees) have been constructed/installed on the adjacent parcel (APN 4460-019-025), which effectively blocks all access from Latigo Shore Drive to the recorded public easement. Parcel 4460-019-025 is a vacant parcel adjacent to the site that is subject to this amendment. The portion of Parcel 4460-019-025 where the unpermitted development is located has been developed and utilized as the applicant's front/side yard area for the subject residence, although actual ownership of this separate parcel is held under an incorporated entity identified as "Parachute Productions Co." A review of historic aerial photographs by Commission staff shows that the portion of this adjacent parcel where the unpermitted development is located was previously a dirt turnout/road shoulder along Latigo Shore Drive. In addition, an unpermitted retaining wall and fill have been constructed along the northern road shoulder of Latigo Shore Drive on Parcel 4460-019-025. The unpermitted retaining wall and fill occupy a portion of the road shoulder historically used for beach access parking.

As originally proposed, the applicant was requesting after-the-fact approval for the unpermitted 6 ft. high block wall on the adjacent parcel that is blocking the public vertical access way (but was not requesting approval for the unpermitted retaining wall on the northern side of Latigo Shore Drive); however, on July 19, 2006, the applicant revised the proposed amendment description to delete any reference to all proposed development on the adjacent parcel (APN 4460-019-025) from this application. As such, this amendment application does not address any development on the adjacent parcel (APN 4460-019-025). Thus, the Commission's enforcement division will evaluate further actions to address the unpermitted development on the adjacent parcel.

Existing development on the subject site (APN 4460-019-143) consists of the existing single family residence, which was constructed approximately 10 ft. further seaward than approved by the underlying coastal permit for its construction. The site is also developed with an unpermitted railroad tie stairway, an unpermitted below-grade soldier pile/grade beam retaining wall along the western (upcoast) property line that extends in a north/south direction from the northern property line to the sandy beach to the south. In addition, an unpermitted 6 ft. high block wall has been constructed in the front yard (between the residence and Latigo Shore Drive) and a second 6 ft. high concrete block wall is also located along the western property line on top of a portion of the unpermitted soldier pile wall; however, the block wall does not extend any further seaward than the residence and does not encroach onto the sandy beach. In addition, unpermitted grading has occurred on site involving the construction of an artificial fill slope on the sandy beach with a flat pad area located at the top of the slope, immediately seaward of the residence. The portion of the unpermitted flat pad located seaward of the residence has been planted with an unpermitted lawn while the portion of the flat pad landward of the deck driplines (under the residence) has been developed with an unpermitted concrete slab more than 800 sq. ft. in size. Unpermitted framing/walling has been

constructed around the unpermitted concrete pad and the underfloor area effectively functions as a walkway, patio, and storage area for the residence.

Permit History and Previous Commission Actions:

The subject site and the two adjacent lots to the east have been subject to several previous coastal development permit applications and enforcement actions. The subject parcel (APN 4460-019-143) and the two adjacent lots to the east were created pursuant to the Commission's approval of Coastal Development Permit 5-88-794 (Lachman Preferred Financial Corp.), which was issued on June 13, 1990, for the subdivision of a single 37,130 sq. ft. lot into three separate parcels and the construction of three single family residences subject to ten (10) special conditions. The westernmost of the three created parcels created by the underlying permit (APN 4460-019-143) is the applicant's parcel that is the subject of this coastal development permit amendment. The special conditions of approval included the recordation of offers to dedicate both lateral and vertical public access, recordation of a deed restriction to inform the property owner and all future property owners that any improvements on site would require the issuance of a coastal development permit and specifically prohibiting any development "under the floors or seaward of the existing structures" and prohibiting the construction of any development at beach level.

In addition, as a condition of CDP 5-88-794, Special Condition Seven (7) required the applicant record a future improvements deed restriction requiring that any future development, additions, or improvements to any of the three subject properties would require a new coastal development permit. Further, this deed restriction specifically provided that no permanent improvements, with the exception of one public path or stairway, shall be allowed or constructed within the geologic setback area, under the floors of the approved structure (no underfloor areas), or seaward of any of the existing structures. The Commission found that this condition was necessary to ensure that future development on site would not be constructed in areas of the subject site prone to hazards from wave action, wave caused erosion of the bluff slope, and landslide which would require the construction of new shoreline protective devices in order to ensure structural and geologic stability. Therefore, because portions of the development proposed by this amendment would be inconsistent with this condition (including the proposed grading seaward of the residence, the proposed private stairway located in the geologic setback area, and the proposed underfloor area under the residence) the applicant is requesting that Special Condition Seven (7) of the underlying permit (and the previously recorded deed restriction) be revised to allow for such development.

Although the underlying permit approved by the Commission in 1988 authorized construction of residences on each of the two parcels immediately downcoast of the subject parcel, no residences on those parcels were built at that time. Instead, residences were constructed on each of these downcoast lots at a later date pursuant to the Commission's subsequent approval of Coastal Development Permits 4-97-168 and 4-97-169 in November 1997. However, the Commission notes that all conditions for the

underlying subdivision of land required by CDP 5-88-794 remain in effect on the subject site, as well as each of these two neighboring parcels, including Special Condition Two which required the provision of lateral public access along the sandy beach across each of the three sites, as well as Special Condition Seven, which required the recordation of a deed restriction in order to put all future owners on notice that the construction of any development under the approved floor level of each residence or seaward of the approved deck stringlines is prohibited.

The applicant's representative has asserted to staff that the proposed underfloor area on the applicant's property should be allowed because similar underfloor areas with patio/walkways are located on the two adjacent parcels immediately to the east (downcoast) of the subject site. However, the Commission notes that the underfloor areas/patios/walkways that are constructed at-grade on the bluff slope on both of the two adjacent parcels constitute unpermitted development and, thus, do not constitute precedents for approving the unpermitted development on the applicant's property. In fact, the neighboring property owner at 26524 Latigo Shore Drive has recently submitted a coastal development permit application requesting after-the-fact approval for some of this development and will be agendized for future Commission action. Therefore, the Commission's action on this amendment application will serve as a precedent for the resolution of the unpermitted development on the two neighboring properties.

In addition, the applicant has submitted four separate applications to the Commission, each seeking to amend CDP No. 5-88-794.¹ However, no amendments have been previously approved.

1. Amendment Application No. 5-88-794-A2

The applicant previously submitted amendment application No. 5-88-794-A2 on January 9, 1998. The application sought after-the-fact approval for the following development:

1. as-built relocation of the residence and septic system approximately 10 ft. further seaward from the plan approved by the Commission under CDP No. 5-88-794;
2. as-built soldier pile/grade beam retaining wall (consisting of 20 soldier piles) along the western (upcoast) property line;
3. as-built 6 ft. high concrete block, sideyard wall on top of the soldier pile retaining wall
4. as-built 6 ft. high concrete block frontyard wall between the residence and Latigo Shore Drive

¹ A previous amendment application, No. 5-88-794-A1, was submitted by Jeanette Goldbaum on April 2, 1990. Staff deemed the application incomplete and returned it to Mrs. Goldbaum on April 25, 1990.

Staff deemed this application complete, and the matter was scheduled to be heard by the Commission during the November 1998 Commission hearing, although the matter was postponed until the April 1999 Commission hearing. Subsequently, Mr. Kelley withdrew this application prior to the April 1999 hearing.

2. Amendment Application 5-88-794-A3

On October 13, 1998, the applicant, Mr. Kelley, once again sought to amend CDP No. 5-88-794. He submitted application No. 5-88-794-A3, requesting after-the-fact approval for all of the same development previously proposed as part of CDP Application 5-88-794-A2, however, the applicant also requested:

1. authorization for the removal of the previously recorded offer to dedicate a vertical a public access easement on his property, which had been previously required by the Commission as Special Condition Three of the underlying permit as mitigation for the approved subdivision and construction of the residence.

Staff deemed this application complete and the matter was scheduled to be heard at the November 1998 Commission hearing. As with CDP 5-88-794-A2, this matter was postponed, rescheduled for the April 1999 Commission hearing, and subsequently withdrawn by the applicant prior to the hearing.

3. Current Amendment Application: No. 5-88-794-A4

On August 19, 1999, the applicant submitted this current application to amend CDP No. 5-88-794. Since this application was originally submitted, the proposed project description has been changed by the applicant. As originally submitted, this application requested all of the same development previously proposed in each of the previous two amendment applications including after-the-fact approval for the as-built relocation of the residence and septic system approximately 10 ft. further seaward, an as-built soldier pile/grade beam retaining wall (consisting of 20 soldier piles) along the western (upcoast) property line, an as-built 6 ft. high concrete block, sideyard wall on top of the soldier pile retaining wall, an as-built 6 ft. high concrete block frontyard wall between the residence and Latigo Shore Drive, and authorization for the removal of the previously recorded offer to dedicate a vertical a public access easement on his property. However, in addition to these previously proposed five items, this new amendment application also included, as originally submitted, the request for after-the-fact approval of the following additional seven items:

1. approximately 350 cu. yds. of as-built grading (125 cu. yds. of cut and 225 cu. yds. of fill) to construct an artificial slope and flat pad area under and seaward of the residence);
2. as-built installation of a lawn atop the unpermitted flat pad area located seaward of the residence;

3. an as-built non-structural, at-grade concrete slab under the residence;
4. as-built non-structural framing/walls around the unpermitted concrete pad and existing caissons;
5. an as-built 6 ft. high concrete block wall around the perimeter of a separate parcel (APN 4460-019-025) located immediately landward and adjacent of the subject parcel. This existing wall has resulted in completely blocking the public's ability to access the previously recorded vertical public easement on the subject parcel from Latigo Shore Drive;
6. an as-built railroad tie stairway on bluff slope; and
7. authorization to re-record the previously recorded lateral public access easement along the sandy beach (which was required pursuant to Special Condition No. 2 of CDP No. 5-88-794) in a further seaward location.

Staff determined that, as submitted, the originally application was substantially incomplete and notified the applicant by letter dated September 17, 1999, that additional materials were required to file the application as complete. On November 24, 1999, Darren Domingue, representative for the applicant at the time of original submittal, provided additional materials. However, after reviewing the materials, staff concluded that the application remained incomplete. A second letter was sent to the applicant on January 20, 2000, again listing the materials required to complete the permit. On April 12, 2000, additional materials were again submitted in response to the January 20, 2000 letter from staff; however, staff concluded that all requested materials had still not been submitted. On July 21, 2000, staff notified the applicant in writing specifying which required materials were still missing from the application. An October 19, 2000 response by Mr. Domingue failed to provide the materials necessary to complete the application. Subsequently, Commission staff spoke with Mr. Kelley on numerous occasions, including but not limited to May 31, 2001 and June 1, 2001, discussing the incomplete status of his application and the additional materials necessary to complete the file. On November 25, 2005, after receiving additional materials, staff determined this application was complete for purposes of filing.

This application was originally scheduled for the Commission's May 2006 hearing in Santa Rosa; however, the applicant requested additional time in order to allow for the preparation and submittal of additional materials from the applicants geologic and engineering consultants regarding the stability of the proposed concrete slab and the necessity of the proposed soldier pile wall. Thus, the applicant extended the Commission's review period under the Permit Streamlining Act from May 24, 2006 to no later than August 22, 2006. However, no additional materials were submitted by the applicant and this application was agendized again, this time for the July 2006 Commission Hearing. On June 22, 2006, the applicant submitted a written request, requesting that this item be postponed until the Commission's August hearing in order to allow for the preparation and submittal of additional materials by the applicant's

geologic and engineering consultants regarding the stability of proposed concrete slab and necessity of the proposed soldier pile wall. On July 14, 2006, the applicant submitted an undated letter from Delta Engineering Services titled "Engineering Report" which has been included as Exhibit 9.

Recent Changes to Proposed Amendment Application (CDP 5-88-794-A4):

On July 19, 2006, the applicant submitted a letter dated July 18, 2006, which revised the proposed amendment description, deleting the following elements from the previously proposed project:

1. request for after-the-fact approval of all development on the adjoining Parcel 4460-019-025, including the as-built 6 ft. high concrete block wall;
2. request for after-the-fact approval of the lawn atop the unpermitted flat pad area located seaward of the residence;
3. proposal to re-record/relocate the previously recorded lateral public access easement further seaward.
4. proposal to delete/abandon the recorded vertical public access easement that has been accepted by *Access For All*;

In addition, the letter states that the applicant is amending the proposed project to remove some of the previously placed unpermitted fill on the beach, and the portion of the flat graded unpermitted pad located seaward of the deck dripline by re-sloping "the bluff at the rear of the property to the stringline" and removing the lawn. However, the applicant is still not proposing to restore/remove the portion of the flat graded pad area located under the bottom floor of the residence where the unpermitted underfloor area was constructed and the concrete slab with non-structural framing/walls is located. Thus, it is not possible to discern from the revised project description either the quantity, extent, or location of either the as-built grading that the applicant is requesting approval of or the "resloping" of the bluff slope that is now proposed as part of this amended application.

4. **Cease and Desist Order (CCC-05-CD-05), Executive Director Cease and Desist Order (ED-05-CD-01), and Recorded Notice of Violation (CCC-05-NOV-03):**

On March 3, 2005, Commission staff confirmed that unpermitted development was occurring on the project site involving the use of heavy equipment on the beach to grade the beach/bluff and construction of an approximately 90-foot long rock revetment immediately seaward of the unpermitted fill slope/flat pad and unpermitted lawn area on the applicant's property (as shown on Exhibit 10). Pursuant to his authority under Coastal Act Section 30809, the Executive Director issued a Notice of Intent to Issue an Executive Director Cease and Desist Order ("EDCDO NOI"). When the applicant failed

to provide a timely and satisfactory response, as required by Coastal Act Section 30809(b) and as defined by Section 13180 of the Commission's Regulations, the Executive Director issued Executive Cease and Desist Order No. ED-05-CD-01 ("EDCDO"). The EDCDO directed the applicant to immediately cease and desist all unpermitted development activity, including the ongoing construction of the rock revetment.

On May 12, 2005, the Commission approved Cease and Desist Order CCC-05-CD-05 requiring removal of the unpermitted rock revetment. As part of the approved Cease and Desist Order, Mr. Kelley stipulated to the recordation of a Notice of Violation (CCC-05-NOV-03) for the subject parcel in the office of the Los Angeles County Recorder. In addition, the Cease and Desist Order also required the applicant to remove all other unpermitted development on the subject site, including the as-built soldier pile/grade beam retaining wall (consisting of 20 soldier piles); the as-built 6 ft. high concrete block sideyard wall on top of the soldier pile retaining wall; the as-built 6 ft. high concrete block wall between the residence and Latigo Shore Drive; the as-built railroad tie stairway; the as-built concrete slab; the as-built exterior non-structural framing around slab and existing caissons; the as-built railroad tie stairway, and all as-built grading for the fill slope and flat yard area on the sandy beach.

Alternatively, the Order also provided that if the applicant submitted the previously requested materials to complete the pending application for this amendment (CDP 5-88-794-A4) then the applicant will only be required to remove any unpermitted development on site that is not approved by the Commission pursuant to this amendment request. Specifically, Provisions 5d and 5e of the Order state:

D. Within 20 days after the Commission acts on Amendment Application No. 5-88-794-A4, Respondent shall submit plans for removal of all unpermitted development including a schedule for all actions required, as described in this Order, that has not been approved in that action.

If the Executive Director determines that any modifications or additions to the plans are necessary, he shall notify Respondent. Respondent shall complete requested modifications and resubmit the plans for approval within 10 days of the notification.

E. Within 20 days of the approval of said plan by the Executive Director, Respondent shall complete removal of all unpermitted development, in accordance with the approved plan and this Order.

Thus, pursuant to the requirements of Cease and Desist Order CCC-05-CD-05, the applicant will be required to submit plans, for the review and approval of the Executive Director, for the complete removal of all unpermitted development on the subject site that is not otherwise specifically authorized by this permit amendment (CDP 5-88-794-A4). Failure to remove the unpermitted development within 20 days after approval of the removal plans by the Executive Director would constitute a violation of the terms of Cease and Desist Order CCC-05-CD-05.

B. Hazards and Geological Stability

The proposed development is located on a beachfront parcel in Malibu, an area generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to the Malibu include landslides, erosion, and flooding. In addition, fire is an inherent threat to the indigenous chaparral community of the coastal mountains. Wild fires often denude hillsides in the Santa Monica Mountains of all existing vegetation, thereby contributing to an increased potential for erosion and landslides on property. In addition, the adopted Malibu Local Coastal Program (LCP) contains the following development policies related to hazards and bluff top development that are applicable to the proposed development:

Section 30253 of the Coastal Act, which is incorporated as part of the Malibu LCP, states in pertinent part that new development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

In addition, the following LCP policies are applicable in this case:

- 4.2. All new development shall be sized, designed and sited to minimize risks to life and property from geologic, flood, and fire hazard.*
- 4.4. On ancient landslides, unstable slopes and other geologic hazard areas, new development shall only be permitted where an adequate factor of safety can be provided, consistent with the applicable provisions of Chapter 9 of the certified Local Implementation Plan.*
- 4.5 Applications for new development, where applicable, shall include a geologic/soils/geotechnical study that identifies any geologic hazards affecting the proposed project site, any necessary mitigation measures, and contains a statement that the project site is suitable for the proposed development and that the development will be safe from geologic hazard. Such reports shall be signed by a licensed Certified Engineering Geologist (CEG) or Geotechnical Engineer (GE) and subject to review and approval by the City Geologist.*
- 4.22 Siting and design of new shoreline development and shoreline protective devices shall take into account anticipated future changes in sea level. In particular, an acceleration of the historic rate of sea level rise shall be considered. Development shall be set back a sufficient distance landward and elevated to a sufficient foundation height to eliminate or minimize to the maximum extent feasible hazards associated with anticipated sea level rise over the expected 100 year economic life of the structure.*
- 4.23 New development on a beach or oceanfront bluff shall be sited outside areas subject to hazards (beach or bluff erosion, inundation, wave uprush) at any time during the full projected 100-year economic life of the development. If complete avoidance of hazard areas is not feasible, all new beach or oceanfront bluff development shall be elevated above the base Flood Elevation (as defined by FEMA) and setback as far*

landward as possible. All development shall be setback a minimum of 10 feet landward of the most landward surveyed mean high tide line. Whichever setback method is most restrictive shall apply. Development plans shall consider hazards currently affecting the property as well as hazards that can be anticipated over the life of the structure.

4.24 All proposed development on a beach or along the shoreline, including a shoreline protection structure, 1) must be reviewed and evaluated in writing by the State Lands Commission and 2) may not be permitted if the State Lands Commission determines that the proposed development is located on public tidelands or would adversely impact tidelands unless State Lands Commission approval is given in writing.

4.26 Development on or near sandy beach or bluffs, including the construction of a shoreline protection device, shall include measures to insure that:

- **No stockpiling of dirt or construction materials shall occur on the beach;**
- **All grading shall be properly covered and sandbags and/or ditches shall be used to prevent runoff and siltation;**
- **Measures to control erosion shall be implemented at the end of each day's work;**
- **No machinery shall be allowed in the intertidal zone at any time to the extent feasible;**
- **All construction debris shall be removed from the beach.**

The applicant is requesting authorization for after-the-fact approval of an at-grade concrete slab that has been constructed on the bluff slope under the floor level of the residence. In addition, the applicant constructed non-structural framing/walls around three sides of the concrete pad and the existing caissons in order to create an underfloor area which functions as an additional patio, walkway, and storage area under the residence. The applicant is also proposing an unspecified amount of grading for the as-built flat pad area located under the bottom floor of the residence where the concrete slab is located and new proposed grading to remove a portion of the unpermitted fill slope and flat pad area where the existing unpermitted lawn is located. Further, because the above referenced development was specifically prohibited by the terms and conditions of the underlying permit, the applicant is requesting that Special Condition Seven (7) of Coastal Development Permit 5-88-794 be revised to delete the restriction that prohibits any permanent development "under the floors or seaward of the existing structures" on the subject site.

The slope of the subject site is a modified natural bluff/artificial fill slope that was originally modified by Caltrans during the construction of Pacific Coast Highway. In its approval of the underlying Coastal Development Permit 5-88-794 (Lachman), the Commission found that the sandy beach on the subject site is subject to periodic inundation by wave uprush and that; therefore, the toe of the bluff on site is expected be subject to wave-caused erosion over time. Further, the Commission finds that development located along the shoreline, such as the proposed project, is subject to inherent potential hazard from storm generated wave damage. The El Nino storms recorded in 1982-1983 caused high tides of over 7 feet, which were combined with storm waves of up to 15 feet. The severity of the 1982-1983 El Nino storm events are often used to illustrate the extreme storm event potential of the California coast.

The Commission notes that Special Condition (7) of CDP 5-88-794 specifically required the recordation of a future improvements deed restriction requiring that any future development, additions, or improvements to any of the three subject properties would require a new coastal development permit. Further, this deed restriction included the additional provision that, no permanent improvements, with the exception of one public path or stairway, shall be allowed or constructed within the geologic setback area on the westernmost site (the parcel that is the subject of this current amendment application CDP 5-88-794-A4), or under the floors, or seaward of any of the existing structures. Specifically, Special Condition Seven (7) was required, in part, to ensure that future development would not occur on any portions of the site that had been previously identified as particularly hazardous or unstable.

In this case, the bluff slope of the site immediately seaward of the residence is subject to significant wave hazard as evidenced by the erosion of the slope that occurred during the 2005 storm season (prior to the applicant's construction of an unpermitted rock revetment on the site in an apparent attempt to halt bluff erosion). In addition, a geologic setback area has been identified on the site by the applicant's geologic engineering consultant and recorded on the Los Angeles County Assessor's Map for the property. The purpose of the setback is to provide a buffer between residential development and the landslide located on the property immediately to the west of the subject parcel. Special Condition Seven of the underlying permit was also required to ensure that no future development, other than the approved public access stairs should be allowed within that portion of the site. In its approval of the CDP 5-88-794, the Commission found that without these provisions to ensure geologic and engineering stability of new development on the project site, approval of the underlying project would not have been consistent with the policies of the Coastal Act and Malibu/Santa Monica Mountains certified LUP.

As part of the underlying subdivision approved by CDP 5-88-794, a Wave Uprush Study by David Weiss, Structural Engineer dated November 21, 1988 was submitted. The report stated that, in order to ensure structural stability, the proposed single family residence on the subject site must be supported on a caisson/grade beam foundation rather than on a standard concrete slab at grade. Thus, as approved by the Commission, the single family residence on the subject site was designed using a caisson/grade beam foundation with the bottom of the caisson supported slab for the residence at an elevation of 34 ft. above mean sea level (MSL). However, the applicant is now requesting after-the-fact approval for an unpermitted underfloor area that was constructed under the residence at approximately 26-27 ft. elevation above MSL. The underfloor area consists of a concrete pad (with framing/walls on three sides) which sits at-grade on a flat pad area that was constructed with an unspecified amount of cut grading to notch into the bluff slope and an unspecified amount of fill grading to extend the flat pad seaward of the residence and construct a supporting fill slope which descends to the sandy beach below.

In past permit actions in the Malibu area, the Commission has required that new structures located on beachfront lots be designed using a caisson/grade beam foundation that extends to bedrock to ensure stability of the structure regardless of whether the soils on the site are subject to erosion or washout. In this case, although the residence was constructed on a caisson/grade-beam foundation, the unpermitted underfloor area was not. The Geologic Update Report by GeoSystems dated December 24, 1998, states:

The fill slope is approximately 18-feet high with a gradient at about 1.5:1 gradient. The toe of the fill slope is on the beach, and the top of slope supports a level pad with a patio slab about 10-feet below the lower level of the residence. The patio slab extends under a portion of the residence and was poured around the existing columns supporting the residence. However, we understand the slab is not structurally tied to the residence.

Because the toe of the fill slope appears to extend into the wave uprush zone, the slope is considered to be subject to erosion and failure which may result in undermining and failure of the patio slab.

In addition on July 14, 2006, the applicant submitted a new undated letter from Delta Engineering Services addressing the geologic stability of the underfloor area and concrete pad (Exhibit 9). Although the letter from Delta Engineering itself did not include any new information, a second letter was attached as an exhibit which had not been previously submitted by the applicant (Exhibit 9). The second letter, prepared by RAF Industries General Contractors dated April 21, 1999, states:

We have reviewed the existing condition and structural integrity of concrete slab on grade at above referenced project.

Based on the information you and/or your contractor have provided, the existing concrete slab is 10 inch thick and reinforced with #7 rebar at 10 inch on center in each direction. This slab, extends approximately 8 feet at front of the existing concrete piles and 17 feet toward the back.

In case of the shoreline washout, which will be limited to the extent of the existing concrete columns and grade beam, the existing concrete slab is capable of overhanging 8 feet without structural failure or excessive deflection...

We conclude the existing concrete slab on grade is safe and in sound structural condition.

Although the above referenced letter includes a statement that the "existing concrete slab on grade is safe and in sound structural condition" the Commission notes that based on the information submitted by the applicant, the concrete slab was constructed at-grade using concrete and rebar rather than supported on a caisson/grade beam foundation. Further, despite the claims that the concrete slab is safe, in the event of severe beach erosion caused by winter storm activity, the proposed at-grade concrete slab and the unpermitted graded pad where it is located would likely be undermined by

storm waves unless some form of shoreline protective device is constructed in the future to protect the fill slope seaward of the pad.

In response to this concern, the applicant has asserted that the unpermitted concrete slab is structurally sound and cites the above referenced letter from RAF Engineering that, in the event that the slab is undermined, the slab should be able to overhang an eroded bluff slope by at least 8 ft. before failing. However, the RAF Engineering letter and project plans both indicate that the slab is actually 17 ft. in depth/length. Thus, based on the analysis of the applicant's engineering consultant, it appears that failure of the slab is expected if the slope erodes further than 8 ft. landward of the seaward edge of the slab. The applicant did not submit any information regarding the expected rate of bluff retreat on site; however, the Wave Uprush Report Update prepared by David C. Weiss Engineering and Associates dated 2/6/00 includes findings that bluff slope seaward of the residence will be subject to wave-caused erosion. The report states:

[T]he proposed fill slope will be subject to wave action. As one can see the maximum uprush limit is beyond, or landward, of the southside of the house.

As such, the stability of the graded flat pad area, concrete pad, and related non-structural framing "walls" around the pad are reliant on the continued maintenance of the unpermitted fill slope which would most likely require the future construction of a seawall or other form of shoreline protection (similar to the unpermitted rock revetment constructed by the applicant in 2005) in contradiction to the policies of both the adopted LCP and with Section 30235 of the Coastal Act which has been included in the LCP as a guiding policy. Further, in its approval of the underlying permit, based on the applicant's assertions that the proposed development would not require the construction of any shoreline protective devices to ensure stability, the Commission required Special Conditions Seven and Eight which specifically prohibited: (1) the construction any future shoreline protective structures to protect any of the development authorized by that permit and (2) any development on the site seaward of the residence. The construction of a shoreline protective device on site would be inconsistent with both of these previously required conditions.

The applicant's coastal engineering consultant has previously estimated that the expected wave uprush on the project site is only expected to reach approximately 17.80 ft. MSL in elevation. However, although the applicant's engineering consultant has estimated that the maximum limit of wave uprush will be lower in elevation than the elevation of the unpermitted pad (which is approximately 26-27 ft. in elevation above MSL), the toe of the bluff is located at approximately 16 ft. in height above MSL and is subject to periodic erosion. Further, the Commission notes that wave action on the subject site resulted in a significant amount of erosion and landward retreat of the unpermitted fill slope/bluff on the subject site during the past 2005 storm season. In fact, as mentioned above, on May 12, 2005, the Commission issued Cease and Desist Order CCC-05-CD-05 requiring removal of an unpermitted rock revetment which the applicant constructed at the toe of unpermitted fill slope on his property in an effort to prevent the fill slope and flat pad area at the top of the slope (including the proposed underfloor area) from being washed away by wave action. In fact, a portion of the

unpermitted flat pad area at the top of the slope was destroyed during the 2005 storm season as clearly shown in a low-altitude aerial photograph dated June 9 2006, and included as Exhibit 10. As shown in the 2005 aerial photograph, a portion of the bluff slope on the downcoast portion of the site has already eroded to the seaward edge of the unpermitted concrete slab/walkway and underfloor area. The photograph also shows the partially constructed unpermitted rock revetment prior to its removal pursuant to the Commission issuance of the Cease and Desist Order CCC-05-CD-05.

Thus, ample evidence exists that beachfront development located on the subject site is subject to an unusually high degree of risk due to storm waves and surges, high surf conditions, erosion, and flooding. As such, the Commission finds that any new development that is permitted on the subject site must be designed and constructed in a manner that ensures geologic and structural stability and minimize hazards consistent with Policies 4.2, 4.5, 4.22, and 4.23 of the LCP, and Section 30253 of the Coastal Act which has been included in the adopted LCP. Further, the Commission finds that the bluff slope/unpermitted fill slope and the unpermitted flat pad area (including the area where the unpermitted concrete pad and underfloor area have been constructed) has previously been subject to wave-caused erosion within the past year and no evidence has been submitted by the applicant that further wave-caused erosion should not be expected to reoccur in the future.

Moreover, the Commission notes that there is no interior ingress/egress to the underfloor area from inside the residence itself. The underfloor storage/patio area is accessible only from the seaward side of the residence and concrete pad. Therefore, regardless of the structural stability of the concrete slab itself and related non-structural framing, access to the underfloor area is dependent upon the continued maintenance of the unpermitted pad and slope located seaward of the residence. In the event that the unpermitted flat pad area and fill slope located seaward of the residence are lost due to wave caused erosion, then the concrete pad/underfloor area would effectively be hanging in the air below the residence with no access. In fact, as shown in the 2005 aerial photograph, a portion of the bluff slope has already eroded to the seaward edge of the unpermitted concrete slab/walkway and underfloor area.

Thus, the Commission finds, for the reasons set forth above, that the portion of the proposed underfloor area, including construction of the as-built flat graded pad located both underneath and seaward of the existing residence, the concrete pad, and the non-structural framing around the pad (i.e., "walls") is not consistent with Policies 4.2, 4.5, 4.22, and 4.23 of the LCP, and Section 30253 of the Coastal Act which has been included in the adopted LCP. Therefore, **Special Condition One (1)** requires, prior to the issuance of the amendment, the applicant shall submit, for the review and approval of the Executive Director, revised project plans which shall only show the development on the subject parcel (APN 4460-019-143) which has been approved pursuant to this amended permit and which shall also show that the following development has been deleted in its entirety: (1) as-built concrete slab, (2) as-built exterior non-structural framing around existing caissons and concrete slab, (3) all proposed grading seaward or below the residence, including, but not limited to construction of a fill slope and flat

yard area on the sandy beach or under the lower level of the residence, and (4) all lawn area seaward of the residence.

Further, as originally proposed, this amendment application included the request for after-the-fact approval of not only the portion of the unpermitted flat pad under the residence but also the unpermitted fill slope and portion of the flat pad area located seaward of the residence where the unpermitted lawn is located. On July 19, the applicant's representative submitted a letter dated July 18, 2006, revising the proposed project description to delete the request for approval of the fill slope and the portion of the flat graded pad seaward of the residence (Exhibit 8). However, the applicant is still requesting approval for the unspecified amount of grading that occurred under the residence (and deck driplines) in order to construct the unpermitted underfloor area. In addition, the applicant has also revised the proposed project description to "reslope the bluff at the rear of the property to the stringline setback, consistent with building and safety requirements."

However, the applicant has not submitted any grading plans, calculations of grading amounts, or any analysis from an engineer regarding the location, quantity, or any details regarding the actual scope of work proposed to reslope the bluff slope on the subject site. In addition, the Commission notes that the applicant is not proposing to fully restore the bluff and is still requesting after-the-fact approval for the portion of the unpermitted fill pad located landward of the deck stringline, including the unpermitted floor area. No information has been submitted by the applicant regarding the amount of grading to be retained, removed, or the stability of the remaining slope and pad after such grading would be completed. As discussed above in detail, the unpermitted fill slope and flat pad where the lawn is located has been subject to severe erosion during the past storm season. As such, the Commission finds that removal of the unpermitted fill from the sandy beach and bluff slope is appropriate. However, lacking any plans or description of the actual work proposed, it is not possible to ensure that the applicant's proposal to "reslope the bluff" would be adequate to restore the bluff or to ensure the geologic and structural stability of the graded pad areas that are proposed to be retained. Therefore, **Special Condition One (1)** requires the applicant to submit revised plans which delete all proposed grading from the approved plans.

In addition, the applicant is requesting after-the-approval of the existing unpermitted rail road tie stairway located on the bluff slope on the western side of the property. In its approval of CDP 5-88-794, the Commission approved the construction of a public access stairway on the bluff slope on the western portion of the subject site in order to provide formal public access from Latigo Shore Drive to the sandy beach. The approved stairway was located in footprint of the required public vertical access easement. However, the existing private stairway on site is not located in the same configuration as the previously approved public stairway and, most importantly, is not located entirely within footprint of the recorded public vertical easement. The applicant has previously asserted to the Commission staff that the stairway was required by the Los Angeles County Fire Department. However, no evidence of any such requirement

has been submitted by the applicant. Regardless, the stairway constitutes unpermitted development that requires a coastal development permit.

As a condition of approval of CDP 5-88-794, the Commission required, pursuant to Special Condition 7, that the applicant record a future improvements deed which specifically prohibited the future construction of any permanent improvements, with the exception of one **public** path or stairway, within the geologic set back area, or under the floors, or seaward of the existing structures. In this case, the proposed private stairway is partially constructed within the previously identified geologic setback area on the bluff slope. Special Condition 7 of CDP 5-88-794 was required order to ensure that future development would not be unduly subject to wave hazard and landslide. Construction of new development on the beach, under the residence, or within the geologic setback area would require the construction of shoreline protective devices to ensure geologic stability, contrary to the hazards and bluff slope development policies of the Coastal Act and the certified Malibu/Santa Monica Mountains LUP which was used as a guidance document at the time that the Commission originally approved CDP 5-88-794. Policy 165 of the Malibu/Santa Monica Mountains LUP states that “[n]o further permanent structures shall be permitted on a bluff face, except for engineered staircases or accessways to provide public beach access...” Although the Malibu/Santa Monica Mountains has since been superceded by the adopted City of Malibu Local Coastal Program (LCP) which, in addition to the public access policies of the Coastal Act, is now the standard of review for development on the subject site, the Commission notes that the provisions of Policy 165 of the previous LUP have been incorporated into the adopted City of Malibu LCP as Policy 10.4.F. Policy 10.4.F of the adopted Local Implementation Plan component of the LCP states:

No permanent structures shall be permitted on a bluff face, except for engineered stairways or accessways to provide public beach access where no feasible alternative means of public access exists. Drainage devices constructed to conform to applicable Best Management Practices shall be installed in such cases. Such structures shall be constructed and designed to not contribute to further erosion of the bluff face and to be visually compatible with the surrounding area to the maximum extent feasible.

Thus, the Commission finds that the construction of a private stairway on the bluff slope on the project site is inconsistent with the terms and conditions of the previously approved coastal development permit, the provisions of the adopted LCP, and with the policies of the previously adopted LUP. Therefore, **Special Condition One (1)** requires the applicant to submit revised project plans for the review and approval of the Executive Director which shall show that the as-built private stairway on the bluff slope has been deleted. **Special Condition One (1)** also allows the applicant to submit revised plans for the construction of the previously approved public access stairway without obtaining a new separate coastal permit, provided that the stairway is constructed within the footprint/configuration of the recorded public vertical access easement consistent with the previously approved plans and designed in consultation with *Access For All*.

In addition, the proposed amendment includes the request for after-the-fact approval to relocate the residence approximately 10 ft. further seaward than previously approved. As part of the underlying subdivision approved by CDP 5-88-794, a Wave Uprush Study was conducted by David Weiss, Structural Engineer dated November 21, 1988. The report recommended that because the site is subject to wave hazard, the single family residence must be supported by a caisson/grade-beam type foundation and that no finished floor level be placed lower than +17.5 feet MSL (mean sea level) datum in order to ensure structural stability. In this case, the originally approved residence was designed with a finished floor height of approximately 34 ft. in elevation above MSL. In this case, although the footprint of the relocated structure will be further seaward, the lowest finished floor elevation of the as-built residence (not including the unpermitted underfloor area) is still located at approximately the same elevation of 34 ft. in height above MSL. Further, the as-built residence was constructed using the same caisson/grade-beam foundation as previously approved. Thus, the relocated structure has still been designed in a manner consistent with the coastal engineer's recommendations for new development.

Section 30253 of the Coastal Act requires that new development minimize risk to life and property in areas of high geologic, flood and fire hazard, and assures stability and structural integrity. The applicant is requesting after-the-fact approval for the construction of a below-grade soldier pile/grade-beam retaining wall (consisting of 20 soldier piles) along the western portion of the property to protect the existing single family residence from an active landslide located on the adjacent parcel that is spreading laterally onto the subject site. The applicant has submitted an Updated Soils and Engineering-Geologic Report dated February 17, 1997 prepared by GeoSystems. The geologic report states:

It is our opinion [that] the design and location recommendations of the previously approved soldier pile system remain applicable. It should be noted that the soldier piles are not required to support the existing residential structure. The existing structure is supported on deepened piles embedded in competent bedrock, the soldier piles are designed to prevent lateral extension of the primarily off- landslide.

The applicant has submitted plans that have been reviewed and approved by the consulting geologist as conforming to all recommendations within the Geologic Report. As stated above, the identified active landslide is encroaching onto the subject site. The applicant's engineering consultant further asserts that the caisson foundation for the residence was designed to withstand wave action but is inadequate, by itself, to withstand the effects of lateral extension of the offsite landslide onto the project site. Further, the soldier pile/grade-beam wall is necessary to ensure the structural stability of the residence. In addition, at Commission staff's request, the applicant's engineering consultants have submitted an analysis to determine the feasibility of removing or relocating the portion of the soldier pile wall that extends onto the sandy beach. The applicant's engineering consultant, Geosystems, has indicated that the removal of any portion of the as-built wall may result in a significant reduction to the stability of the residence due to lateral expansion of the landslide. The Commission's geologist and engineer, have reviewed the information submitted by the applicant and concur that the

soldier pile wall is necessary due to site specific, unique geologic site constraints. Thus, the Commission finds that soldier pile retaining wall is necessary to ensure the geologic stability of the previously approved residence consistent with the provisions of Section 30253, as incorporated in the City of Malibu LCP and with policies of the Malibu regarding geologic hazards.

However, the Commission notes that Special Condition Seven (7) of the underlying permit required the recordation of a future improvements deed restriction that specifically prohibits development on the subject site seaward of the approved residence. Thus, in order to ensure that the development on site approved pursuant to this amendment is not inconsistent with a deed restriction that has been previously recorded and to provide for the after-the-fact approval of the soldier pile wall in its as-built location on the beach, seaward of the residence, it is necessary to amend Special Condition Seven (7) of the underlying permit. Therefore, **Special Condition Five (5)** of this amendment requires the applicant to record a new deed restriction that will supercede and replace the previous deed restriction required by Special Condition Seven. As previously required, the new deed restriction will still provide that any future development or improvements normally associated with the entire property, which might otherwise be exempt, are reviewed pursuant to a coastal development permit or amendment application by either the Commission or the City of Malibu for compliance with the policies of adopted Malibu LCP. **Special Condition Five (5)**, will further revise the previous restrictions required by Special Condition Seven of the underlying permit to ensure that no permanent improvements shall be constructed within the geologic setback area or under the floor/lowest approved level of the residence or seaward of the existing structures with the exception of: (1) one path or stairway within the footprint of the previously recorded public vertical access easement, (2) the soldier pile/grade beam retaining wall (consisting of 20 soldier piles) along the western property line, and (3) the 6 ft. high concrete block wall on top of the soldier pile retaining wall along the western property line; noted on the present approved plans.

In addition, the Commission finds that landscaping of graded and disturbed areas on the subject site will serve to stabilize disturbed soils, reduce erosion and thus enhance and maintain the geologic stability of the site. Further, relocation of the residence further seaward has also resulted in changes to the previously approved plans, including landscaping on site. Therefore, **Special Condition Two (2)** requires the applicant to submit landscaping plans certified by the consulting geotechnical engineer as in conformance with their recommendations for landscaping of the project site. **Special Condition Two (2)** also requires the applicant to utilize and maintain native and noninvasive plant species compatible with the native bluff vegetation in the surrounding area for landscaping the project site.

Invasive and non-native plant species are generally characterized as having a shallow root structure in comparison with their high surface/foliage weight. The Commission notes that non-native and invasive plant species with high surface/foliage weight and shallow root structures do not serve to stabilize slopes and that such vegetation results in potential adverse effects to the stability of the project site. Native species, alternatively, tend to have a deeper root structure than non-native and invasive species,

and once established aid in preventing erosion. Therefore, the Commission finds that in order to ensure site stability, all slopes and disturbed and graded areas of the site shall be landscaped with appropriate native plant species, as specified in **Special Condition Two (2)**.

In addition, the Commission notes that because there remains some inherent risk in building on properties adjacent to historic and active landslides and on beachfront lots which are subject to the unforeseen possibility of wave attack, erosion, and flooding, such as the subject site, and that the Commission can only approve the project if the applicant assumes the liability from the associated risks. In its approval of the underlying coastal permit, the Commission required the applicant to record a deed restriction assuming the risks of building on the subject site. However, because the proposed residence will be located further seaward than previously approved and the applicant is proposing new structural improvements, including the construction of a below-grade soldier pile/grade beam retaining wall in order to address previously unidentified geologic issues on site, the Commission finds it necessary to require the applicant to agree to assume the risks of development as approved by this amendment. Therefore, Special Condition Three (3) requires the applicant to assume the liability from the associated risks of developing the subject site. The assumption of risk will show that the applicant is aware of and appreciates the nature of the hazards which exist on the site and which may adversely affect the stability or safety of the proposed development and agrees to assume any liability for the same.

Further, Special Condition Six (6) requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as a restriction on the use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restriction is imposed on the subject property.

Conclusion

The Commission finds that the portion of the proposed amendment for after-the-fact approval of: (1) relocation of the 4,615 sq. ft. residence and septic system approximately 10 ft. further seaward consistent with their as-built location; (2) an as-built soldier pile/grade beam retaining wall (consisting of 20 soldier piles) along western property line; (3) an as-built 6 ft. high concrete block wall on top of the soldier pile retaining wall; and (4) an as-built 6 ft. high concrete block wall between the residence and Latigo Shore Drive, only as conditioned, is consistent with the policies of the adopted Malibu LCP regarding hazards and bluff and shoreline development.

However, the Commission finds that the portion of the proposed amendment for: 1) after-the-fact approval of an as-built concrete slab; (2) after-the-fact approval of as-built non-structural framing/walls around existing caissons and concrete pad; (3) after-the-fact approval of as-built railroad tie stairway; (4) unspecified amount of grading for the as-built flat pad area located under the bottom floor of the residence where the concrete slab is located and new proposed grading to remove a portion of the unpermitted fill slope and flat pad area where the existing unpermitted lawn is located; and (5) the

request that Special Condition Seven of Coastal Development Permit 5-88-794 be revised to delete the restriction that prohibits development under the floors or seaward of the existing structures; is inconsistent with the policies of the adopted Malibu LCP regarding hazards and bluff and shoreline development.

C. Public Access

The Malibu Local Coastal Program (LCP) mandates the provision of maximum public access and recreational opportunities along the coast. The Malibu LCP incorporates Sections 30210, 30211, 30212, and 30220 of the Coastal Act applicable to new development along the beach. In the City of Malibu, all projects requiring a coastal development permit between the first public road and the sea, such as the proposed project, must be reviewed for compliance with the public access and recreation provisions of Chapter 3 of the Coastal Act, in addition to the policies of the adopted Malibu LCP.

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Coastal Act Section 30211 states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Coastal Act Section 30212(a) provides that in new shoreline development projects, access to the shoreline and along the coast shall be provided except in specified circumstances, when:

- (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources.***
- (2) adequate access exists nearby, or,***
- (3) agriculture would be adversely affected. Dedicated access shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.***

Section 30220 of the Coastal Act states:

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such use.

The Malibu LCP contains the following development policies related to public access and recreation that are applicable to the proposed development:

- 2.5 *New development shall be sited and designed to minimize impacts to public access and recreation along the shoreline and trails. If there is no feasible alternative that can eliminate or avoid all access impacts, then the alternative that would result in the least significant adverse impact shall be required. Impacts may be mitigated through the dedication of an access or trail easement where the project site encompasses an LCP mapped access or trail alignment, where the City, County, State, or other public agency has identified a trail used by the public, or where there is substantial evidence that prescriptive rights exist. Mitigation measures required for impacts to public access and recreational opportunities shall be implemented prior to or concurrent with construction of the approved development.*
- 2.40 *For any project where the LCP requires an offer to dedicate an easement for a trail or for public beach access, a grant of easement may be recorded instead of an offer to dedicate an easement, if a government agency or private association is willing to accept the grant of easement and is willing to operate and maintain the trail or public beach accessway.*
- 2.41 *For all offers to dedicate an easement that are required as conditions of Coastal Development Permits approved by the City, the City has the authority to approve a private association that seeks to accept the offer. Any government agency may accept an offer to dedicate an easement if the agency is willing to operate and maintain the easement. The City shall approve any private association that submits a management plan that indicates that the association will open, operate, and maintain the easement in accordance with terms of the recorded offer to dedicate the easement.*
- 2.63 *Consistent with the policies below, maximum public access from the nearest public roadway to the shoreline and along the shoreline shall be provided in new development. Exceptions may occur only where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources; (2) adequate access exists nearby, or; (3) agriculture would be adversely affected. Such access can be lateral and/or vertical. Lateral access is defined as an accessway that provides for public access and use along the shoreline. Vertical access is defined as an accessway which extends to the shoreline, or perpendicular to the shoreline in order to provide access from the first public road to the shoreline.*
- 2.64 *An Offer to Dedicate (OTD) an easement for lateral public access shall be required for all new oceanfronting development causing or contributing to adverse public access impacts. Such easement shall extend from the mean high tide line landward to a point fixed at the most seaward extent of development i.e. intersection of sand with toe of revetment, vertical face of seawall, dripline of deck, or toe of bluff.*

The policies of the adopted Malibu LCP and Sections 30210 and 30211 of the Coastal Act mandate that maximum public access and recreational opportunities be provided and that development not interfere with the public's right to access the coast. Likewise, Section 30212 of the Coastal Act requires that adequate public access to the sea be provided to allow use of dry sand and rocky coastal beaches.

The Commission's experience in reviewing shoreline projects in Malibu indicates that individual and cumulative impacts on access resulting from new development include, among others, encroachment on lands subject to the public trust thus physically excluding the public; interference with natural shoreline processes which are necessary to maintain publicly-owned tidelands and other beach areas; overcrowding or congestion of such tideland or beach areas; and visual or psychological interference

with the public's ability to use lands subject to the public trust. In past permit decisions, based on the access, recreation and development sections of the Coastal Act and the adopted Malibu LCP, the Commission has required public access to and along the shoreline in new development projects and has required design changes in other projects to reduce interference with access to and along the shoreline.

The subject site is a beachfront lot located between Latigo Shore Drive and the ocean. Easements have been recorded for both public vertical and lateral access on and across the subject parcel. The lateral public access easement is located along the sandy beach portion of the subject lot between the mean high tide line and the approximate toe of the bluff. The vertical public access easement is located on the western (upcoast) side of the property and extends from the northern property boundary to the mean high tide line to the south. Both the vertical and lateral public access easements were accepted by *Access For All* on September 23, 2004.

In addition to the formally recorded public access easements on site, the State also owns tidelands, which are those lands below the Mean High Tide Line as it exists from time to time. By virtue of its admission into the Union, California became the owner of all tidelands and all lands lying beneath inland navigable waters. These lands are held in the State's sovereign capacity and are subject to the common law public trust. The public trust doctrine restricts uses of sovereign lands to public trust purposes, such as navigation, fisheries, commerce, public access, water oriented recreation, open space, and environmental protection. The public trust doctrine also severely limits the ability of the State to alienate these sovereign lands into private ownership and use free of the public trust. Consequently, the Commission must avoid decisions that improperly compromise public ownership and use of sovereign tidelands.

Where development is proposed that may impair public use and ownership of tidelands, the Commission must consider where the development will be located in relation to tidelands. The legal boundary between public tidelands and private uplands is relation to the ordinary high water mark. In California, where the shoreline has not been affected by fill or artificial accretion, the ordinary high water mark of tidelands is determined by locating the existing "mean high tide line." The mean high tide line is the intersection of the elevation of mean high tide with the shore profile. Where the shore is composed of sandy beach whose profile changes as a result of wave action, the location at which the elevation of mean high tide line intersects the shore is subject to change. The result is that the mean high tide line (and therefore the boundary) is an "ambulatory" or moving line that moves seaward through the process known as accretion and landward through the process known as erosion.

Consequently, the position of the mean high tide line fluctuates seasonally as high wave energy (usually but not necessarily) in the winter months causes the mean high tide line to move landward through erosion, and as milder wave conditions (generally associated with the summer) cause the mean high tide line to move seaward through accretion. In addition to ordinary seasonal changes, the location of the mean high tide line is affected by long term changes such as sea level rise and diminution of sand supply.

The Commission must consider a project's direct and indirect effect on public tidelands. To protect public tidelands when beachfront development is proposed, the Commission must consider (1) whether the development or some portion of it will encroach on public tidelands (i.e., will the development be located below the mean high tide line as it may exist at some point throughout the year) and (2) if not located on tidelands, whether the development will indirectly affect tidelands by causing physical impacts to tidelands. In the case of the proposed project, the State Lands Commission (as stated in a letter dated May 6, 1998) does not assert a claim that the project intrudes onto sovereign lands.

Even structures located above the mean high tide line, however, may have an adverse effect on shoreline processes as wave energy reflected by those structures contributes to erosion and steepening of the shore profile, and ultimately to the extent and availability of tidelands. That is why the Commission also must consider whether a project will have indirect effects on public ownership and public use of shorelands. The applicants seek Commission approval of a new beachfront residence supported on friction pile foundation. As previously discussed in detail, although the proposed project will not include the construction of any shoreline protection device, the direct occupation of sandy area by the proposed residence, will result in potential adverse effects to public access along the sandy beach.

Although no shoreline protective device is proposed as part of this project, the Commission notes that interference by a shoreline protective device has a number of adverse effects on the dynamic shoreline system and the public's beach ownership interests. First, changes in the shoreline profile, particularly changes in the slope of the profile, which results from reduced beach width, alter the usable area under public ownership. A beach that rests either temporarily or permanently at a steeper angle than under natural conditions will have less horizontal distance between the mean low water and mean high water lines. This reduces the actual area of public property available for public use. The second effect on access is through a progressive loss of sand as shore material is not available to nourish the bar. The lack of an effective bar can allow such high wave energy on the shoreline that materials may be lost far offshore where it is no longer available to nourish the beach. The effect of this on the public is again a loss of area between the mean high water line and the actual water. Third, shoreline protective devices such as revetments and bulkheads cumulatively affect public access by causing accelerated and increased erosion on adjacent public beaches. This effect may not become clear until such devices are constructed individually along a shoreline and they eventually affect the profile of a public beach. Fourth, if not sited landward in a location that insures that the revetment is only acted upon during severe storm events, beach scour during the winter season will be accelerated because there is less beach area to dissipate the wave's energy. Finally, revetments and bulkheads interfere directly with public access by their occupation of beach area that will not only be unavailable during high tide and severe storm events but also potentially throughout the winter season.

In addition, the Commission must also consider whether a project affects any public right to use shorelands that exist independently of the public's ownership of tidelands.

In addition to a new development's effects on tidelands and on public rights protected by the common law public trust doctrine, the Commission must consider whether the project will affect a public right to use beachfront property, independent of who owns the underlying land on which the public use takes place. Generally, there are three additional types of public uses identified as: (1) the public's recreational rights in navigable waters guaranteed to the public under the California Constitution and state common law, (2) any rights that the public might have acquired under the doctrine of implied dedication based on continuous public use over a five-year period; and (3) any additional rights that the public might have acquired through public purchase or offers to dedicate.

These use rights are implicated as the public walks the wet or dry sandy beach below the mean high tide plane. This area of use, in turn moves across the face of the beach as the beach changes in depth on a daily basis. The free movement of sand on the beach is an integral part of this process, and it is here that the effects of structures are of concern.

Based on the access, recreation and development sections of the Coastal Act, the California Coastal Commission has required the dedication of recorded public access easements to and along the shoreline as a condition of approval for several development projects along the coast. In some cases, existing public land and public road easements may either provide: (1) direct public access to the sandy beach or (2) ingress for members of the public to access a recorded easement for beach access that has been previously required by the Commission across private property. In addition, in the event that such public land or public road easements have been historically utilized by members of the public to access the shoreline, the public may have acquired the prescriptive right for use of such land pursuant to the doctrine of implied dedication based on continuous public use over a five-year period. The vacation or transfer of ownership/interest in public lands or road easements may result in the direct loss of the public's ability to access the sandy beach directly where such lands immediately abut the sandy beach or indirectly where such public lands provide ingress to a recorded easement for beach access that has been previously required by the Commission across private property.

The Coastal Act states that any activity defined as "development" within the Coastal Zone requires a coastal development permit. Under the Coastal Act, the vacation or transfer to a private entity of any public land or interest in public land (including a road easement or right-of-way) that provides public access to the beach/ocean (including pedestrian or vehicular access) is an action that results in a "change in the intensity of use of water, or access thereto" and constitutes "development" as defined by Section 30106 of the Coastal Act and, therefore, requires a coastal development permit.

In addition to the requirement that public agencies obtain a coastal development permit prior to the vacation or transfer of such lands, the Coastal Act also has specific restrictions that apply to state land adjacent to the ocean. Public Resources Code Section 30609.5 states: "no state land that is located between the first public road and the sea, with an existing or potential public accessway to or from the sea, or that the

Commission has formally designated part of the California Coastal Trail, shall be transferred or sold by the state to a private entity unless the state retains a permanent property interest in the land adequate to provide public access to or along the sea." This expressly applies to any interest in land, including easements. Section 30609.5(e). There are some exceptions for land owned by the Department of Parks and Recreation or the Coastal Conservancy, when certain findings are made. This section became effective January 1, 2000.

The beaches of Malibu are extensively used by visitors of both local and regional origin and most planning studies indicate that attendance of recreational sites will continue to increase significantly over the coming years. The public has a right to use the shoreline under the public trust doctrine, the California Constitution and California common law. The Commission must protect those public rights by assuring that any proposed shoreline development does not interfere with or will only minimally interfere with those rights. In the case of the proposed project, the potential for the permanent loss of sandy beach as a result of the change in the beach profile or steepening from potential scour effects, as well as the presence of a residential structure out over the sandy beach does exist.

In past permit actions, the Commission has required that all new development on a beach, including new single family residences, provide for lateral public access along the beach in order to minimize any adverse effects to public access. In this case, when the Commission previously approved the underlying coastal permit (CDP 5-88-794) in 1988 for the subdivision that created the subject lot and the construction of the residence on site, the Commission found that the construction of a residence on the subject lot, as proposed, would result in the loss of existing public access to the beach from Latigo Shores Drive. Specifically, the Commission found that there was evidence of public prescriptive rights across the subject site and that the project could only be found consistent with the public access policies of the Coastal Act if special conditions were required to maintain existing public access both along the beach, as well as public access to the beach from the roadway. The Staff Report for CDP 5-88-794 includes the findings made by the Commission in its approval of the underlying permit that authorized the creation of the subject parcel and the construction of the existing residence. As stated in the staff report for CDP 5-88-794, the Commission found that:

The property is on land that has been subject to public rights, including ownership, use and easements. The bluff is a publicly constructed fill over lands subject to periodic flooding, a beach. It was entirely in public ownership until it was no longer needed as a highway, and even this proposed development is only possible because Caltrans abandoned a slope easement to allow construction of the seepage pits. While it was in public ownership, the easement was used for beach parking. Part of this permit request includes that approval of the abandonment of the parking easement.

The bluff and beach are subject to prescriptive rights. Both areas have long been used by the public. There were trails over the bluff evident in aerials shot in 1972. The highway parking has been used to park cars to get to the beach and to surf Latigo Point; it has remained in continuous use since the main highway was

relocated in 1946, according to the best recollections of surfers. There are two pathways down the bluff, even though the owners have attempted to fence the land off. There are two holes in the fence at the top of the pathways. The pathway that appears on the topographic map will only be partially blocked by the structures and lies, for the most part, on the geologic setback on the west end of the property, but the other pathway near the eastern end of the property, will be blocked by the proposed condominiums. The public uses the top of the bluff for viewing. They park their cars, get out, and walk the bluff top. This will be blocked. The public uses the toe of the bluffs for shelter and picnicking. This area will be necessarily restricted by the construction of the structures.

....

The Commission finds that there is ample evidence that there is use on this beach, and across and along the bluff both vertically and horizontally. Lateral access and viewing and along the existing highway easement [Latigo Shore Drive] and along the top of the bluff would no longer be possible because the view would be blocked and because the development includes conversion of this public easement area to private use for driveways and septic systems.

As such, the Commission found that the public held prescriptive rights on and across the subject property. Further, as stated in the findings for CDP 5-88-794, the proposed project included the proposal to abandon the Caltrans slope easement seaward of Latigo Shore Drive to allow for the installation of the septic system on the applicant's property. In its findings, the Commission noted that the construction of residences on site and the proposed vacation of a public slope easement (seaward of the public road easement for Latigo Shore Drive) where public parking had previously been available would result in adverse impacts to public access. Therefore, in order to minimize adverse impacts to public access that would result from the project, the Commission required, pursuant to Special Conditions Two and Three of the underlying permit, that the property owner shall record offers to dedicate easements for both vertical and lateral public access on and across the subject site (as shown on Exhibit 3). Special Condition Three of CDP 5-88-794, which required the property owner provide access from the roadway to the sandy beach, specifically provided that:

Prior to the transmittal of the permit, the Executive Director shall certify in writing that the following condition has been satisfied. The applicant shall execute and record a document, in a form and content approved in writing by the Executive Director of the Commission irrevocably offering to dedicate to a public agency or a private association approved by the Executive Director an easement for pass and repass from Pacific Coast Highway to the shoreline. The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property.

....

If and when a vertical public access way has been constructed within 500 feet of the applicant's property and such accessway has been opened for public use and either a private association acceptable to the Executive Director or a public agency has accepted the responsibility for operation and maintenance of the accessway, the applicant may request an amendment to this permit to remove

the recorded easement. Such amendment must be approved by the California Coastal Commission prior to the removal or revision of the recorded easement.

Both the offer to dedicate lateral and vertical public access easements were recorded prior to the issuance of the coastal development permit and were subsequently accepted by *Access For All*, a non-profit organization on September 23, 2004.

The applicant was originally requesting authorization to delete Special Condition Three of CDP 5-88-794 as part of this amendment application in order to allow the applicant to abandon the public vertical access easement located on his property. The Commission notes that Special Condition Three of the CDP 5-88-794 allows for the submittal of an application to remove the previously recorded offer to dedicate the vertical easement on the applicant's property only if another such easement is formally opened/operated by a public agency or private association within 500 ft. of the applicant's property. In this case, there are no public vertical access ways that have been formally accepted/operated by an appropriate party within 500 ft. of the subject site.

Although the subject site is located approximately 100 ft. to the east (downcoast) of two vacant undeveloped beachfront parcels owned by Los Angeles County, the Commission notes that there are no formal improved accessways to the beach available on either of these sites. There is an unimproved trail leading from Latigo Shore Drive to the beach on these parcels; however, an active landslide extends across both these parcels which has resulted in periodic damage to properties, rendering the trail difficult, if not impossible, for most members of the public to use.

In addition, an existing stairway and recorded offer to dedicate a vertical public access easement is located on a separate parcel approximately 380 ft. to the east (downcoast) near the eastern end of Latigo Shore Drive. Although this stairway is located less than 500 ft. from the project site, the easement has not been accepted by a public agency or private association acceptable to the Executive Director. The Commission notes that this stairway is currently maintained by a private homeowner association and is available for public use pursuant to a condition of a separate previously issued coastal development permit; however, the recorded offer to dedicate the vertical public access easement has not yet been accepted by any government agency or private organization. The Commission also notes that the western terminus of Dan Blocker State Beach is located approximately 500 ft. downcoast from the subject site; however, the western (upcoast) portion of the this state beach is backed by high bluffs and does not provide any formal or improved public access from the highway to the beach below within the relative vicinity of the subject site. Thus, the terms of Special Condition Three of CDP 5-88-794 that would allow the applicant to request an amendment to delete the vertical access on his property have not been met.

Thus, after staff informed the applicant that staff could not recommend approval of the amendment as proposed to delete the vertical public accessway required by Special Condition Three; the applicant submitted a revised project description on July 19, 2006, which deleted that request from the proposed amendment description. The applicant's representative has indicated to staff that the applicant still intends to reapply for the

removal of the easement again in the future as part of a separate application. The Commission notes that although Special Condition Three of CDP 5-88-794 allows for the submittal of an application to remove the vertical accessway on the applicant's property, it does not require that the Commission approve such an application whether or not other access is available.

However, although the vertical public access easement on the subject property has been accepted, *Access For All* has not yet been able to actually open and operate the easement because an unpermitted concrete block wall and residential landscaping (a lawn and privacy hedge with trees) have been constructed/installed on the adjacent parcel (APN 4460-019-025), which effectively blocks all access from Latigo Shore Drive to the recorded public easement. Parcel 4460-019-025 is a vacant parcel adjacent to the site that is subject to this amendment. The portion of Parcel 4460-019-025 where the unpermitted development is located has been developed and utilized as the applicant's front/side yard area for the subject residence, although actual ownership of this separate parcel is held under an incorporated entity identified as "Parachute Productions Co." A review of historic aerial photographs by Commission staff shows that the portion of this adjacent parcel where the unpermitted development is located was previously a dirt turnout/road shoulder along Latigo Shore Drive. In addition, an unpermitted retaining wall and fill have been constructed along the northern road shoulder of Latigo Shore Drive on Parcel 4460-019-025. The unpermitted retaining wall and fill occupy a portion of the road shoulder historically used for beach access parking.

As originally proposed, the applicant was also requesting after-the-fact approval for the unpermitted 6 ft. high block wall on the adjacent parcel that is blocking the public vertical access way (but was not requesting approval for the unpermitted retaining wall on the northern side of Latigo Shore Drive); however, on July 19, 2006, the applicant revised the proposed amendment description to delete any reference to all proposed development on the adjacent parcel (APN 4460-019-025) from this application. As such, this amendment application does not address any development on the adjacent parcel (APN 4460-019-025). Thus, the Commission's enforcement division will evaluate further actions to address the unpermitted development on the adjacent parcel.

In addition, this proposed amendment includes the request for after-the-fact approval of an existing unpermitted rail road tie stairway located on the bluff slope on the western side of the property. The stairway provides private access from the top of the bluff to the unpermitted fill pad located partially down the bluff slope and immediately seaward of the residence. In its approval of CDP 5-88-794, the Commission approved the construction of a public access stairway on the bluff slope on the western portion of the subject site in order to provide formal public access from Latigo Shore Drive to the sandy beach. The public access stairway was approved in the same footprint as the required public vertical access easement. Although the existing private stairway crosses and occupies portions of the public easement and is located in the same general area of the site where the public stairway was to be located, it is not constructed in the same configuration as the previously approved public stairway nor entirely within footprint of the recorded public vertical easement. The applicant has previously

asserted to staff that the stairway was required by the Los Angeles County Fire Department. However, no evidence of any such requirement has been submitted by the applicant. Regardless, the stairway constitutes unpermitted development that requires a coastal development permit.

Further, in its approval of the underlying permit, the Commission required, pursuant to Special Condition Seven (7), that the applicant record a future improvements deed which specifically prohibited the future construction of any permanent improvements, with the exception of one **public** path or stairway, within the geologic set back area, or under the floors, or seaward of the existing structures. In this case, the Commission notes that the proposed private stairway is partially constructed within the previously identified geologic setback area on the bluff slope. Special Condition 7 of CDP 5-88-794 was required, in part, to ensure that future development would not be unduly subject to wave hazard and landslide. Construction of new development on the beach, under the residence, or within the geologic setback area would require the construction of shoreline protective devices to ensure the stability of such development, contrary to the hazards and bluff slope development policies of the Coastal Act and the certified Malibu/Santa Monica Mountains LUP which was used as a guidance document at the time that the Commission originally approved CDP 5-88-794. Policy 165 of the Malibu/Santa Monica Mountains LUP states that “[n]o further permanent structures shall be permitted on a bluff face, except for engineered staircases or accessways to provide public beach access...” The Commission notes that although the Malibu/Santa Monica Mountains has since been superseded by the adopted City of Malibu LCP which, in addition to the public access policies of the Coastal Act, is now the standard of review for development on the subject site, the provisions of Policy 165 of the previous LUP have been fully incorporated into the adopted City of Malibu LCP as Policy 10.4.F. Policy 10.4.F of the adopted Local Implementation Plan component of the LCP states:

No permanent structures shall be permitted on a bluff face, except for engineered stairways or accessways to provide public beach access where no feasible alternative means of public access exists. Drainage devices constructed to conform to applicable Best Management Practices shall be installed in such cases. Such structures shall be constructed and designed to not contribute to further erosion of the bluff face and to be visually compatible with the surrounding area to the maximum extent feasible.

Thus, the Commission finds that the construction of a private stairway on the bluff slope on the project site is inconsistent with the terms and conditions of the previously approved coastal development permit, the provisions of the adopted LCP, and with the policies of the previously adopted LUP. Therefore, **Special Condition One (1)** requires the applicant to submit revised project plans for the review and approval of the Executive Director which show that the as-built private stairway on the bluff slope has been deleted in its entirety. **Special Condition One (1)** also allows the applicant to submit revised plans for the construction of the previously approved public access stairway without obtaining a new separate coastal permit, provided that the stairway is constructed within the footprint/configuration of the recorded public vertical access easement consistent with the previously approved plans and designed in consultation with *Access For All*.

The applicant is requesting after-the-fact approval for the construction of an approximately 96 linear ft. long, below-grade soldier pile/grade beam retaining wall. As discussed in detail in the previous section regarding geologic hazards, the applicant has submitted evidence that the caisson foundation for the residence was designed to withstand wave action but is inadequate, by itself, to withstand the effects of lateral extension of the offsite landslide onto the project site. However, the applicant's geologic consultants have further indicated that the soldier pile/grade-beam wall is necessary to ensure the structural stability of the residence in regards to landslide hazard.

However, although the soldier pile is necessary from a geologic standpoint, the Commission finds that the below-grade wall will result in potential adverse impacts to public access due to its location on the sandy beach. An approximately 16 linear ft. long portion of the proposed below-grade soldier pile wall will extend onto the sandy beach. The applicant asserts that the soldier pile wall is not expected to be exposed above grade due to wave action or landslide. However, the Wave Uprush Study prepared by David Weiss and dated October 26, 1999, indicates the soldier pile will clearly be located on a portion of the subject to wave action and that in fact, a portion of the soldier pile/grade-beam wall was temporarily exposed approximately 2 ft. above the scour level of the sandy beach during the El Nino storm event of 1998. It appears that since that storm, the wall has not been re-exposed.

As such, the Commission finds that the piles are currently under the sand or below fill and are not expected to result in adverse impacts to public access along the beach in their present condition. However, in the event that the piles were to become exposed on a regular basis in the future, the exposed soldier piles would pose a physical obstacle to beach users. Therefore, in order to ensure that the soldier pile wall does not result in future impacts to public access along the shoreline, **Special Condition Four (4)** of this amendment requires that the applicant, and all future landowners, remove any portion of the as-built soldier pile/grade beam retaining wall (consisting of 20 soldier piles with grade beams) that becomes exposed above grade due to wave action, erosion, storm conditions, liquefaction, landslide, or earth movement and which the Executive Director determines may constitute a potential hazard or obstacle to public access along the beach. Removal may be limited to the portion of the pile/grade-beam that is exposed above grade. Portions of the wall that are not exposed may remain. Such removal shall require a coastal development permit or an amendment to this coastal permit. Further, Special Condition Eight of the underlying permit was required by the Commission to prohibit the construction of any new development on the beach seaward of the residence, including any form of shoreline protective device, based on the applicant's "assertions that no beach development, including leachfields or seawalls will be necessary to protect the development." Thus, in order to allow for the as-built soldier pile wall to be located on the beach seaward of the residence, **Special Condition Four (4)** is required to supercede and replace Special Condition Eight of the underlying permit as that condition relates to the subject site. Consistent with the terms of the previously required Special Condition Eight, this revised condition will still prohibit

the use of any future shoreline protective device to protect the previously approved development on site.

In addition, Special Condition Seven (7) of the underlying permit required the recordation of a future improvements deed restriction that specifically did not allow for any development on the subject site seaward of the approved residence. Thus, in order to ensure that the development on site approved pursuant to this amendment is not inconsistent with a deed restriction that has been previously recorded and to provide for the after-the-fact approval of the soldier pile wall in its as-built location on the beach, seaward of the residence, it is necessary to amend Special Condition Seven (7) of the underlying permit. Therefore, **Special Condition Five (5)** of this amendment requires the applicant to record a new deed restriction that will provide that any future development or improvements normally associated with the entire property, which might otherwise be exempt, are reviewed as coastal development permit or amendment application by either the Commission or the City of Malibu for compliance with the policies of adopted Malibu LCP in addition to the public access policies of the Coastal Act. **Special Condition Five (5)**, will revise the previous restrictions required by Special Condition Seven of the underlying permit to ensure that no permanent improvements shall be constructed within the geologic setback area or under the floor/lowest approved level of the residence or seaward of the existing structures with the exception of: (1) one path or stairway within the footprint of the previously recorded public vertical access easement, (2) the soldier pile/grade beam retaining wall (consisting of 20 soldier piles) along the western property line, and (3) the 6 ft. high concrete block wall on top of the soldier pile retaining wall along the western property line; noted on the present approved plans.

Further, **Special Condition Six (6)** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as a restriction on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restriction are imposed on the subject property.

The applicant is also requesting after-the-fact approval for a 6 ft. high side yard wall located on the western boundary of the property on top of the below grade soldier piles and a 6 ft. high front yard wall located between the residence and Latigo Shore Drive. Although the below-grade soldier pile/grade beam wall extends seaward of the residence onto the sandy beach, the 6 ft. high above-grade wall atop the soldier piles does not extend seaward of a stringline drawn from the existing decks on site. The proposed above-grade sideyard wall is located perpendicular to Latigo Shores Drive on a descending slope and will not result in any significant adverse impacts to public access or public views from either Pacific Coast Highway or Latigo Shore Drive. In addition, neither the 6 ft. high side yard wall nor front yard wall will encroach into either the recorded vertical or lateral public access easements. Therefore, the sideyard wall and frontyard wall on the subject parcel will not result in any adverse impacts to public access.

Further, this amendment application includes the request for after-the-fact approval for the as-built relocation of the single family residence approximately 10 feet seaward from its previously approved location. Although the residence will not encroach into either the recorded vertical or lateral public access easements, in previous permit actions, the Commission has found that new development on beachfront lots should be located as far landward as feasible in order to reduce seaward encroachment by new development and potential adverse impacts to public access and public views along the beach. In this case, the as-built location of the residence on the subject site will be located no further seaward than the two existing residences located immediately downcoast which were also previously approved by the Commission. Although construction of these two adjacent residences was originally authorized by CDP 5-88-794, the property owner of those parcels did not construct the residences pursuant to that permit but instead obtained two new coastal permits for two redesigned residences in 1997 (CDPs 4-97-168 and 4-97-169). Further, each of the two neighboring residences was proposed, and approved, in a location 10 ft. further seaward than previously approved under CDP 5-88-794 (and no further seaward than the as-built residence on the subject parcel that is subject to this amendment application).

In addition, in the Commission's approval of CDPs 4-97-168 and 169, the Commission found that the relocation of the residences and septic systems 10 ft. further seaward than previously approved by CDP 5-88-794 was only necessary because the applicants were unable to install the necessary septic improvements within the public road easement and were thus, unable to comply with the County Health Department required setback of 15 ft. between the septic system and the structure, since the Commission had originally approved the residences with only a 5 ft. setback from the public road easement. Based on this finding, the Commission approved the relocation of the two neighboring residences. Thus, the Commission finds that the request for after-the-fact approval of the residence on the subject site may be approved based on the findings that Latigo Shore Drive is a public road, which unlike a privately owned road or road easement, has a required setback for residential development that would make the construction of the existing residence on site infeasible as originally approved.

Conclusion

The Commission finds that the portion of the proposed amendment for after-the-fact approval of: (1) relocation of the 4,615 sq. ft. residence and septic system approximately 10 ft. further seaward consistent with their as-built location; (2) an as-built soldier pile/grade beam retaining wall (consisting of 20 soldier piles) along western property line; (3) an as-built 6 ft. high concrete block wall on top of the soldier pile retaining wall; and (4) an as-built 6 ft. high concrete block wall between the residence and Latigo Shore Drive, only as conditioned, is consistent with the public access policies of the adopted Malibu LCP and Chapter 3 of the Coastal Act.

However, the Commission finds that the portion of the proposed amendment for: 1) after-the-fact approval of an as-built concrete slab; (2) after-the-fact approval of as-built non-structural framing/walls around existing caissons and concrete pad; (3) after-the-

fact approval of as-built railroad tie stairway; (4) unspecified amount of grading for the as-built flat pad area located under the bottom floor of the residence where the concrete slab is located and new proposed grading to remove a portion of the unpermitted fill slope and flat pad area where the existing unpermitted lawn is located; and (5) the request that Special Condition Seven of Coastal Development Permit 5-88-794 be revised to delete the restriction that prohibits development under the floors or seaward of the existing structures; is inconsistent with the public access policies of the adopted Malibu LCP and Chapter 3 of the Coastal Act.

D. Visual Resources

The Malibu LCP provides for the protection of scenic and visual resources, including views of the beach and ocean, views of mountains and canyons, and views of natural habitat areas. The LCP identifies Scenic Roads, which are those roads within the City that traverse or provide views of areas with outstanding scenic quality, that contain striking views of natural vegetation, geology, and other unique natural features, including the beach and ocean. The LCP policies require that new development not be visible from scenic roads or public viewing areas. Where this is not feasible, new development must minimize impacts through siting and design measures. In addition, development is required to preserve bluewater ocean views by limiting the overall height and siting of structures where feasible to maintain ocean views over the structures. Where it is not feasible to maintain views over the structure through siting and design alternatives, view corridors must be provided in order to maintain an ocean view through the project site.

Section 30251 of the Coastal Act, as incorporated in the LCP, requires that visual qualities of coastal areas shall be considered and protected, landform alteration shall be minimized, and where feasible, degraded areas shall be enhanced and restored. Section 30251 of the Coastal Act, as incorporated as part of the Malibu LCP, states that:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinated to the character of its setting.

In addition, the following LCP policies are applicable in this case:

- 6.1 *The Santa Monica Mountains, including the City, contain scenic areas of regional and national importance. The scenic and visual qualities of these areas shall be protected and, where feasible, enhanced.***
- 6.2 *Places on and along public roads, trails, parklands, and beaches that offer scenic vistas are considered public viewing areas. Existing public roads where there are***

views of the ocean and other scenic areas are considered Scenic Roads. Public parklands and riding and hiking trails which contain public viewing areas are shown on the LUP Park Map. The LUP Public Access Map shows public beach parks and other beach areas accessible to the public that serve as public viewing areas.

- 6.3** *Roadways traversing or providing views of areas of outstanding scenic quality, containing striking views of natural vegetation, geology, and other unique natural features, including the ocean shall be considered Scenic Roads. The following roads within the City are considered Scenic Roads:*

- *Pacific Coast Highway*
- *Decker Canyon Road*
- *Encinal Canyon Road*
- *Kanan Dume Road*
- *Latigo Canyon Road*
- *Corral Canyon Road*
- *Malibu Canyon Road*
- *Tuna Canyon Road*

- 6.4** *Places on, along, within, or visible from scenic roads, trails, beaches, parklands and state waters that offer scenic vistas of the beach and ocean, coastline, mountains, canyons and other unique natural features are considered Scenic Areas. Scenic Areas do not include inland areas that are largely developed or built out such as residential subdivisions along the coastal terrace, residential development inland of Birdview Avenue and Cliffside Drive on Point Dume, or existing commercial development within the Civic Center and along Pacific Coast Highway east of Malibu Canyon Road.*

- 6.5** *New development shall be sited and designed to minimize adverse impacts on scenic areas visible from scenic roads or public viewing areas to the maximum feasible extent. If there is no feasible building site location on the proposed project site where development would not be visible, then the development shall be sited and designed to minimize impacts on scenic areas visible from scenic highways or public viewing areas, through measures including, but not limited to, siting development in the least visible portion of the site, breaking up the mass of new structures, designing structures to blend into the natural hillside setting, restricting the building maximum size, reducing maximum height standards, clustering development, minimizing grading, incorporating landscape elements, and where appropriate, berming.*

- 6.6** *Avoidance of impacts to visual resources through site selection and design alternatives is the preferred method over landscape screening. Landscape screening, as mitigation of visual impacts shall not substitute for project alternatives including resiting, or reducing the height or bulk of structures.*

- 6.7** *The height of structures shall be limited to minimize impacts to visual resources. The maximum allowable height, except for beachfront lots, shall be 18 feet above existing or finished grade, whichever is lower. On beachfront lots, or where found appropriate through Site Plan Review, the maximum height shall be 24 feet (flat roofs) or 28 feet (pitched roofs) above existing or finished grade, whichever is lower. Chimneys and rooftop antennas may be permitted to extend above the permitted height of the structure.*

- 6.15 ***Fences, walls, and landscaping shall not block views of scenic areas from scenic roads, parks, beaches, and other public viewing areas.***
- 6.18 ***For parcels on the ocean side of and fronting Pacific Coast Highway, Malibu Road, Broad Beach Road, Birdview Avenue, or Cliffside Drive where it is not feasible to design a structure located below road grade, new development shall provide a view corridor on the project site, that meets the following criteria:***
- ***Buildings shall not occupy more than 80 percent maximum of the lineal frontage of the site.***
 - ***The remaining 20 percent of lineal frontage shall be maintained as one contiguous view corridor.***
 - ***No portion of any structure shall extend into the view corridor.***
 - ***Any fencing across the view corridor shall be visually permeable and any landscaping in this area shall include only low-growing species that will not obscure or block bluewater views.***
 - ***In the case of development that is proposed to include two or more parcels, a structure may occupy up to 100 percent of the lineal frontage of any parcel(s) provided that the development does not occupy more than 70 percent maximum of the total lineal frontage of the overall project site and that the remaining 30 percent is maintained as one contiguous view corridor.***
- 6.23 ***Exterior lighting (except traffic lights, navigational lights, and other similar safety lighting) shall be minimized, restricted to low intensity fixtures, shielded, and concealed to the maximum feasible extent so that no light source is directly visible from public viewing areas. Night lighting for sports courts or other private recreational facilities in scenic areas designated for residential use shall be prohibited.***

In its approval of the underlying permit for the residence on the subject site (as well as the two adjacent residences) the Commission found that the construction of large residential structures on the bluff slope/beach would result in adverse impacts on public visual resources. In order to minimize these impacts, the Commission found it necessary to require, pursuant to Special Condition Nine (9) of CDP 5-88-794, that the applicant submit revised plans to reduce the proposed residence from a 4-level structure to no more than a 3-level structure. Special Condition Nine (9) of CDP 5-88-794 requires:

Prior to transmittal of the permit, the applicant shall submit revised plans that limit the development to three levels. For purposes of this condition, a mezzanine and a basement are each levels.

In this case, prior to the issuance of the underlying permit, the previous property owner submitted revised plans, consistent with the specific requirements of Special Condition Eight (8) to reduce the structure on site to no more than three levels and the residence was constructed accordingly. Further, in addition, to being clearly inconsistent with Special Condition Nine of the underlying permit, the proposed underfloor area is also inconsistent Special Condition Seven (7) of CDP 5-88-794 which specifically required the recordation of a future improvements deed restriction requiring that any future development, additions, or improvements to any of the three subject properties would require a new coastal development permit. Further, this deed restriction included the

additional provision that “no permanent improvements...shall be allowed or constructed ...under the floors, or seaward of any of the existing structures.” In this case, construction of the underfloor area has effectively result in the appearance of a 4-level structure and is inconsistent with this condition. The applicant is requesting Special Condition Seven (7) of the underlying permit be revised to allow for the as-built underfloor area.

The applicant’s representative has asserted to staff that the proposed underfloor area on the applicant’s property should be allowed because similar underfloor areas with patio/walkways exist on the two adjacent parcels immediately to the east (downcoast) of the subject site. However, the Commission notes that the underfloor areas/patios/walkways that are constructed at-grade on the bluff slope on both of the two adjacent parcels constitute unpermitted development and, thus, do not constitute precedents for approving the unpermitted development on the applicant’s property. In fact, the neighboring property owner at 26524 Latigo Shore Drive has recently submitted a coastal development permit application requesting after-the-fact approval for some of this development and will be agendized for future Commission action. Therefore, the Commission’s action on this amendment application will serve as a precedent for the resolution of the unpermitted development on the two neighboring properties.

The unpermitted underfloor area is visible in the aerial photograph of the subject site included as Exhibit 10. Based on the engineering information submitted by the applicant, the pad is approximately 48 ft. wide and 17 ft. in depth, or approximately 816 sq. ft. in size. This underfloor area appears to function as a walkway, patio, and storage area and involved an unknown quantity of grading on the bluff to create a flat pad area, installation of an at-grade concrete slab, and non-structural framing “walls” on three sides of the concrete slab. In its approval of the underlying permit, the Commission approved the residence to be approximately 35 ft. in height above grade as viewed from the beach. In this case, as a result of the construction of the underfloor level, the residence is now 45 ft. or greater in height, as measured from the concrete slab of the underfloor level and appears to be a 4-level structure when viewed from the public areas of the sandy beach. Thus, the Commission finds that the construction of the unpermitted underfloor area has resulted in increasing the size and mass of the structure as viewed from the public beach, and is inconsistent with the provisions of the LCP regarding the protection of public views. Therefore, in order to ensure that adverse impacts to public views are minimized, Special Condition One (1) of this amendment requires the applicant to submit revised plans, for the review and approval of the Executive Director, showing that all proposed underfloor improvements, including the concrete pad, non-structural framing “walls”, and all grading are deleted from the final plans.

In addition, the applicant is also requesting after-the-fact approval of a 6 ft. high front yard wall between the residence and Latigo Shore Drive and a 6 ft. high sideyard wall along the western property line. Due to the elevation of Pacific Coast Highway the proposed six foot high wall between the residence and Latigo Shore would not obstruct

any views and will not result in any new adverse impacts to public views from the road. In addition, the front yard wall will not be visible from the sandy beach. Thus, the Commission finds that the front yard wall will not result in any significant adverse visual impacts. In addition, the sideyard wall along the western property line (and perpendicular) to Latigo Shores Drive is located on a descending slope and will not result in any significant impacts to public views from Latigo Shores Drive or Pacific Coast Highway. In addition, the sideyard wall will not extend further seaward than the proposed residence and will not extend onto the sandy beach and will not block views along the coast. Thus, the 6 ft. high block wall on the western property line of the subject parcel will not result in any significant adverse impacts to public views

In addition, the applicant is requesting after-the-fact approval for the construction of an approximately 96 linear ft. long, below-grade soldier pile/grade beam retaining wall. As discussed in detail in the previous section regarding geologic hazards, the applicant has submitted evidence that the caisson foundation for the residence was designed to withstand wave action but is inadequate, by itself, to withstand the effects of lateral extension of the offsite landslide onto the project site. Thus, the applicant's geologic consultants have concluded that the soldier pile/grade-beam wall is necessary to ensure the structural stability of the residence in regards to landslide hazard.

However, regardless of the fact that the soldier pile/grade-beam wall is necessary from a geologic standpoint, the Commission finds that the below-grade wall will result in potential adverse impacts to public access and public views due to its location on the sandy beach if any portion of the wall becomes exposed above grade. An approximately 16 linear ft. long portion of the proposed below-grade soldier pile wall will extend onto the sandy beach. The applicant asserts that the soldier pile wall is not expected to be exposed above grade due to wave action or landslide. However, the Wave Uprush Study prepared by David Weiss and dated October 26, 1999, indicates the soldier pile will clearly be located on a portion of the subject to wave action and that in fact, a portion of the soldier pile/grade-beam wall was temporarily exposed approximately 2 ft. above the scour level of the sandy beach during the El Nino storm event of 1998. The applicant asserts that the wall has not been re-exposed since the 1998 storm.

As such, the Commission finds that the piles are currently under the sand and are not expected to result in adverse impacts to public access or public views along the beach in their present condition. However, in the event that the piles were to become exposed on a regular basis in the future, the exposed soldier piles would pose a physical and visual obstacle to beach users. Therefore, in order to ensure that the soldier pile wall does not result in future impacts to public views and access along the shoreline, **Special Condition Four (4)** of this amendment requires that the applicant, and all future landowners, remove any portion of the as-built soldier pile/grade beam retaining wall (consisting of 20 soldier piles with grade beams) that becomes exposed above grade due to wave action, erosion, storm conditions, liquefaction, landslide, or earth movement and which the Executive Director determines may constitute a potential hazard or obstacle to public access along the beach. Removal may be limited to the

portion of the pile/grade-beam that is exposed above grade. Portions of the wall that are not exposed may remain. Such removal shall require a coastal development permit or an amendment to this coastal permit. The Commission notes that Special Eight of the underlying permit was required by the Commission to prohibit the construction of any new development on the beach seaward of the residence, including any form of shoreline protective device, based on the applicant's "assertions that no beach development, including leachfields or seawalls will be necessary to protect the development." Thus, as proposed to locate any development on the beach, including the soldier pile wall **Special Condition Four (4)** is also required to supercede and replace Special Condition Eight of the underlying permit as that condition relates to the subject site, in order to allow for the proposed development to occur. As revised, this condition will still prohibit the use of any future shoreline protective device to protect the previously approved development on site consistent with the previous provisions of Special Condition Eight.

In addition, Special Condition Seven (7) of the underlying permit required the recordation of a future improvements deed restriction that specifically did not allow for any development on the subject site seaward of the approved residence. Thus, in order to ensure that the development on site approved pursuant to this amendment is not inconsistent with a deed restriction that has been previously recorded and to provide for the after-the-fact approval of the soldier pile wall in its as-built location on the beach, seaward of the residence, it is necessary to amend Special Condition Seven (7) of the underlying permit. Therefore, **Special Condition Five (5)** of this amendment requires the applicant to record a new deed restriction that will supercede the previous deed restriction required by Special Condition Seven and which will provide that any future development or improvements normally associated with the entire property, which might otherwise be exempt, are reviewed as coastal development permit or amendment application by either the Commission or the City of Malibu for compliance with the policies of adopted Malibu LCP in addition to the public access policies of the Coastal Act. **Special Condition Five (5)**, will revise the previous restrictions required by Special Condition Seven of the underlying permit to ensure that no permanent improvements shall be constructed within the geologic setback area or under the floor/lowest approved level of the residence or seaward of the existing structures with the exception of: (1) one path or stairway within the footprint of the previously recorded public vertical access easement, (2) the soldier pile/grade beam retaining wall (consisting of 20 soldier piles) along the western property line, and (3) the 6 ft. high concrete block wall on top of the soldier pile retaining wall along the western property line; noted on the present approved plans.

Further, Special Condition Six (6) requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as a restriction on the use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restriction are imposed on the subject property.

Conclusion

The Commission finds that the portion of the proposed amendment for after-the-fact approval of: (1) relocation of the 4,615 sq. ft. residence and septic system approximately 10 ft. further seaward consistent with their as-built location; (2) an as-built soldier

pile/grade beam retaining wall (consisting of 20 soldier piles) along western property line; (3) an as-built 6 ft. high concrete block wall on top of the soldier pile retaining wall; and (4) an as-built 6 ft. high concrete block wall between the residence and Latigo Shore Drive, only as conditioned, is consistent with the policies of the adopted Malibu LCP regarding visual resources.

However, the Commission finds that the portion of the proposed amendment for: 1) after-the-fact approval of an as-built concrete slab; (2) after-the-fact approval of as-built non-structural framing/walls around existing caissons and concrete pad; (3) after-the-fact approval of as-built railroad tie stairway; (4) unspecified amount of grading for the as-built flat pad area located under the bottom floor of the residence where the concrete slab is located and new proposed grading to remove a portion of the unpermitted fill slope and flat pad area where the existing unpermitted lawn is located; and (5) the request that Special Condition Seven of Coastal Development Permit 5-88-794 be revised to delete the restriction that prohibits development under the floors or seaward of the existing structures; is inconsistent with the policies of the adopted Malibu LCP regarding visual resources.

E. Unpermitted Development

Unpermitted development has taken place on the property prior to submission of this permit amendment application including the relocation of the footprint of the previously approved single family residence and septic system ten feet seaward, a railroad tie stairway, the construction of a soldier pile/grade-beam wall, the construction of a six foot high vertical wall atop the soldier pile wall along the western property line, the construction of a six foot high front yard wall, a concrete pad with non-structural framing/"walls", landscaping, including but not limited to a lawn, and approximately 350 cu. yds. of grading (125 cu. yds. of cut and 225 cu. yds. of fill on the sandy beach and bluff slope.

In addition, on March 3, 2005, Commission staff confirmed that unpermitted development was occurring on the project site involving the use of heavy equipment on the beach to grade the beach/bluff and construction of an approximately 90-foot long rock revetment immediately seaward of the unpermitted fill slope/flat pad and unpermitted lawn area on the applicant's property. Pursuant to his authority under Coastal Act Section 30809, the Executive Director issued a Notice of Intent to Issue an Executive Director Cease and Desist Order ("EDCDO NOI"). When the applicant failed to provide a timely and satisfactory response, as required by Coastal Act Section 30809(b) and as defined by Section 13180 of the Commission's Regulations, the Executive Director issued Executive Cease and Desist Order No. ED-05-CD-01 ("EDCDO"). The EDCDO directed the applicant to immediately cease and desist all unpermitted development activity, including the ongoing construction of the rock revetment.

On May 12, 2005, the Commission approved Cease and Desist Order CCC-05-CD-05 requiring removal of the unpermitted rock revetment. As part of the approved Cease and Desist Order, Mr. Kelley stipulated to the recordation of a Notice of Violation (CCC-05-NOV-03) for the subject parcel in the office of the Los Angeles County Recorder. In addition, the Cease and Desist Order also required the applicant to remove all other unpermitted development on the subject site, including the as-built soldier pile/grade beam retaining wall (consisting of 20 soldier piles); the as-built 6 ft. high concrete block sideyard wall on top of the soldier pile retaining wall; the as-built 6 ft. high concrete block wall between the residence and Latigo Shore Drive; the as-built railroad tie stairway; the as-built concrete slab; the as-built exterior non-structural framing around slab and existing caissons; the as-built railroad tie stairway, and all as-built grading for the fill slope and flat yard area on the sandy beach.

Alternatively, the Order also provided that if the applicant submitted the previously requested materials to complete the pending application for this amendment (CDP 5-88-794-A4) then the applicant will only be required to remove any unpermitted development on site that is not approved by the Commission pursuant to this amendment request. Specifically, Provisions 5d and 5e of the Order state:

D. Within 20 days after the Commission acts on Amendment Application No. 5-88-794-A4, Respondent shall submit plans for removal of all unpermitted development including a schedule for all actions required, as described in this Order, that has not been approved in that action.

If the Executive Director determines that any modifications or additions to the plans are necessary, he shall notify Respondent. Respondent shall complete requested modifications and resubmit the plans for approval within 10 days of the notification.

E. Within 20 days of the approval of said plan by the Executive Director, Respondent shall complete removal of all unpermitted development, in accordance with the approved plan and this Order.

Thus, pursuant to the requirements of Cease and Desist Order CCC-05-CD-05, the applicant will be required to submit plans, for the review and approval of the Executive Director, for the complete removal of all unpermitted development on the subject site that is not otherwise specifically authorized by this permit amendment (CDP 5-88-794-A4). Failure to remove the unpermitted development within 20 days after approval of the removal plans by the Executive Director would constitute a violation of the terms of Cease and Desist Order CCC-05-CD-05.

In order to ensure that the portion of the proposed amendment that involves unpermitted development that will be approved after-the-fact by this application is resolved in a timely manner, the Commission finds it necessary to require the applicant to fulfill all of the Special Conditions as a prerequisite to the issuance of this permit, as required by Special Condition Seven (7) within 90 days of Commission action. Only as conditioned, is the proposed development consistent with the Coastal Act.

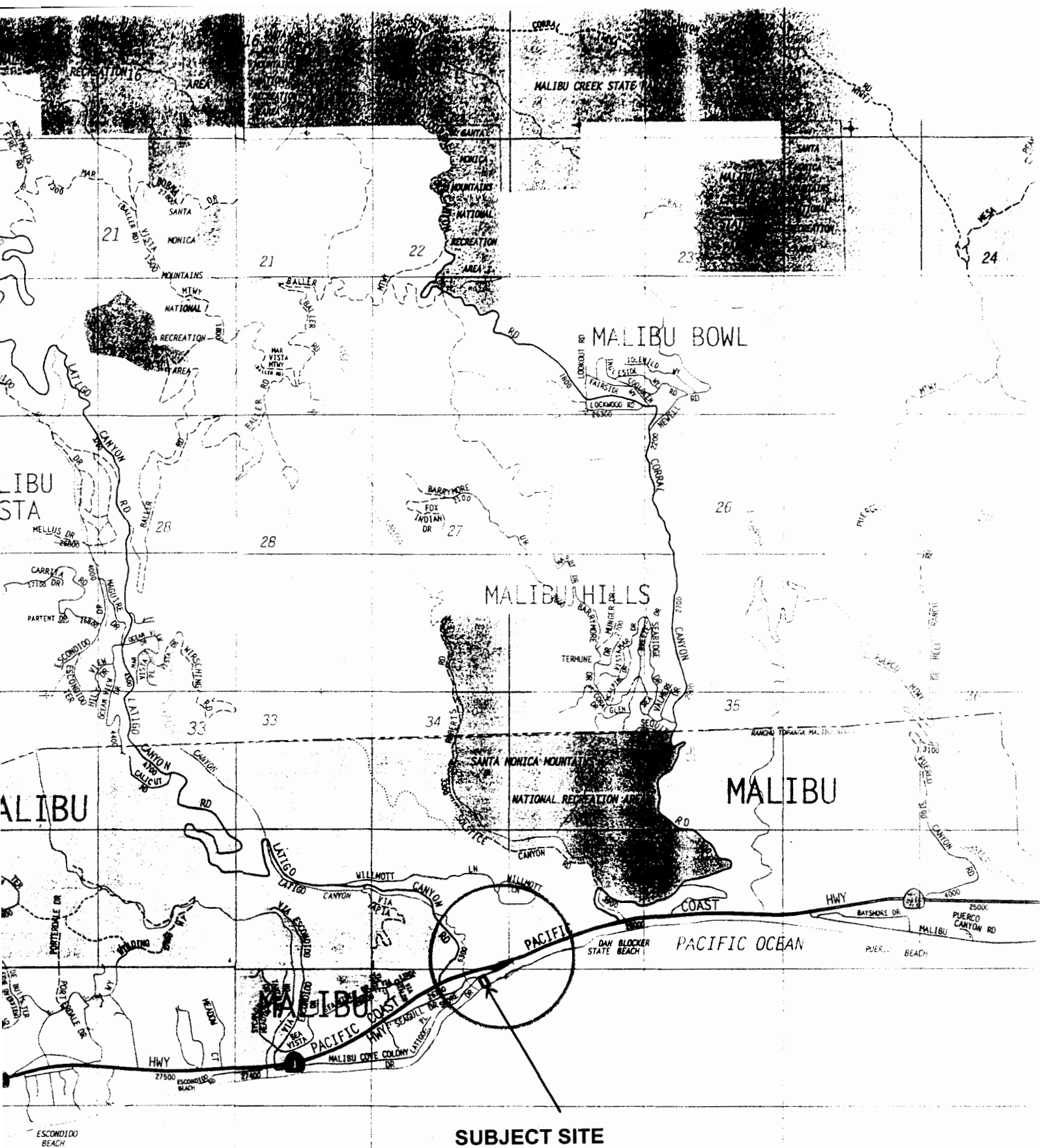
Although development has taken place prior to Commission action on this permit amendment, consideration of the application by the Commission is based solely upon

policies of the adopted Malibu LCP and the public access policies of the Coastal Act. Commission action on this permit amendment application does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal development permit or permit amendment.

F. California Environmental Quality Act

Section 13096(a) of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmentally Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect that the activity may have on the environment.

The Commission finds that the portion of the proposed project that will be approved by this amendment, as conditioned, will not have any significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. In addition, the Commission finds that the portion of the proposed project that will be denied by this amendment, would result in significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. Therefore, the portion of the proposed project approved by this amendment, only as conditioned, has been adequately mitigated and is determined to be consistent with CEQA and the policies of the Coastal Act.



SUBJECT SITE

PACIFIC

EXHIBIT 1

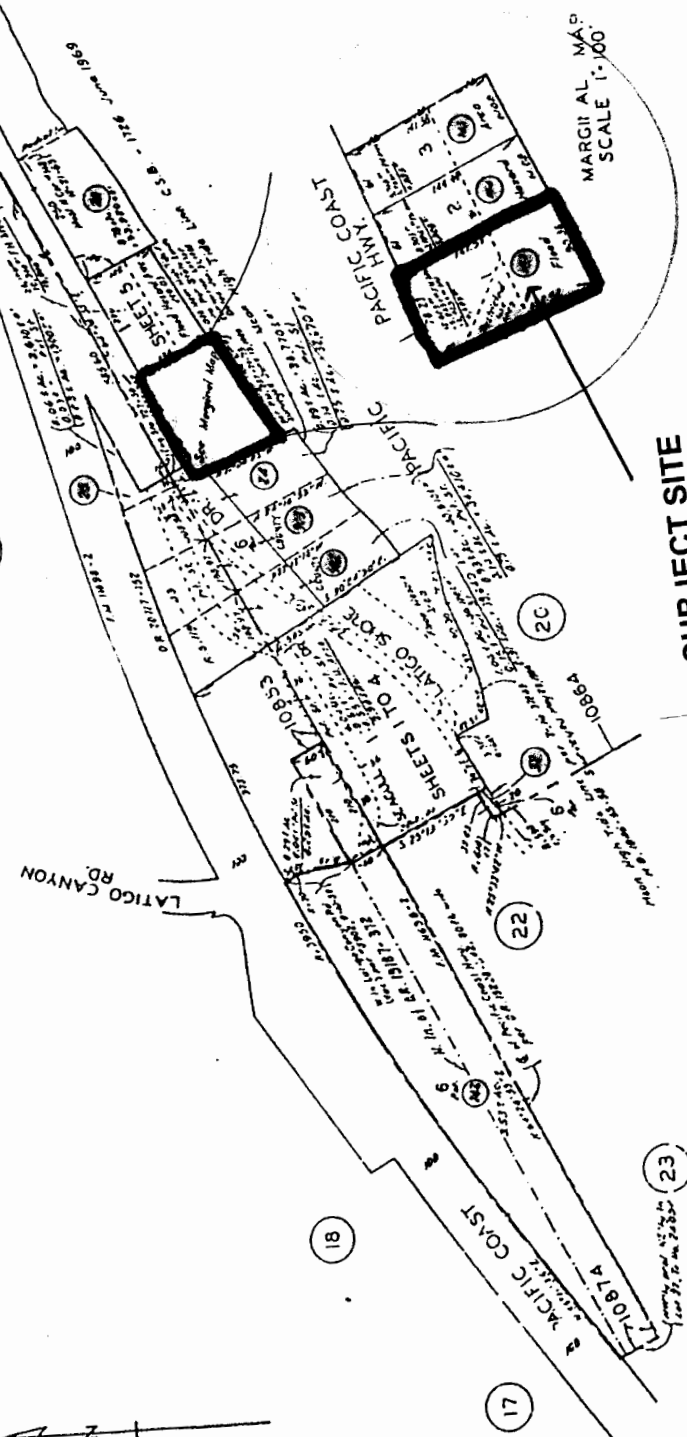
CDP 5-88-794-A4 (Kelley)

Location Map

11/17/2000
 11/17/2000
 11/17/2000
 11/17/2000

460 19
 SHEET 1
 SCALE 1" = 100' & 200'

1996



For Lots 12, 13, 14, 15 are
 subject to Geological Hazard.

PARCEL MAP --- P.M. 237-74-75

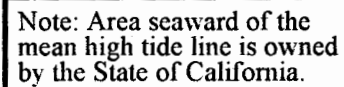
CONDOMINIUM
 TRACT NO. 44383 M.B. 1130 - 17 - 18
 LAND OF MATTHEW KELLER IN THE RANCHO
 TOPANGA MALIBU SEQUIT R.F. 534
 CONDOMINIUM
 TRACT NO. 37848 M.B. 1046 - 55 - 58

CODE
 10864
 10874
 10853

FOR PREV. ASSMT SEE:
 4460 - 13 & 20

EXHIBIT 2
CDP 5-88-794-A4 (Kelley)
Parcel Map

Malibu, Los Angeles County



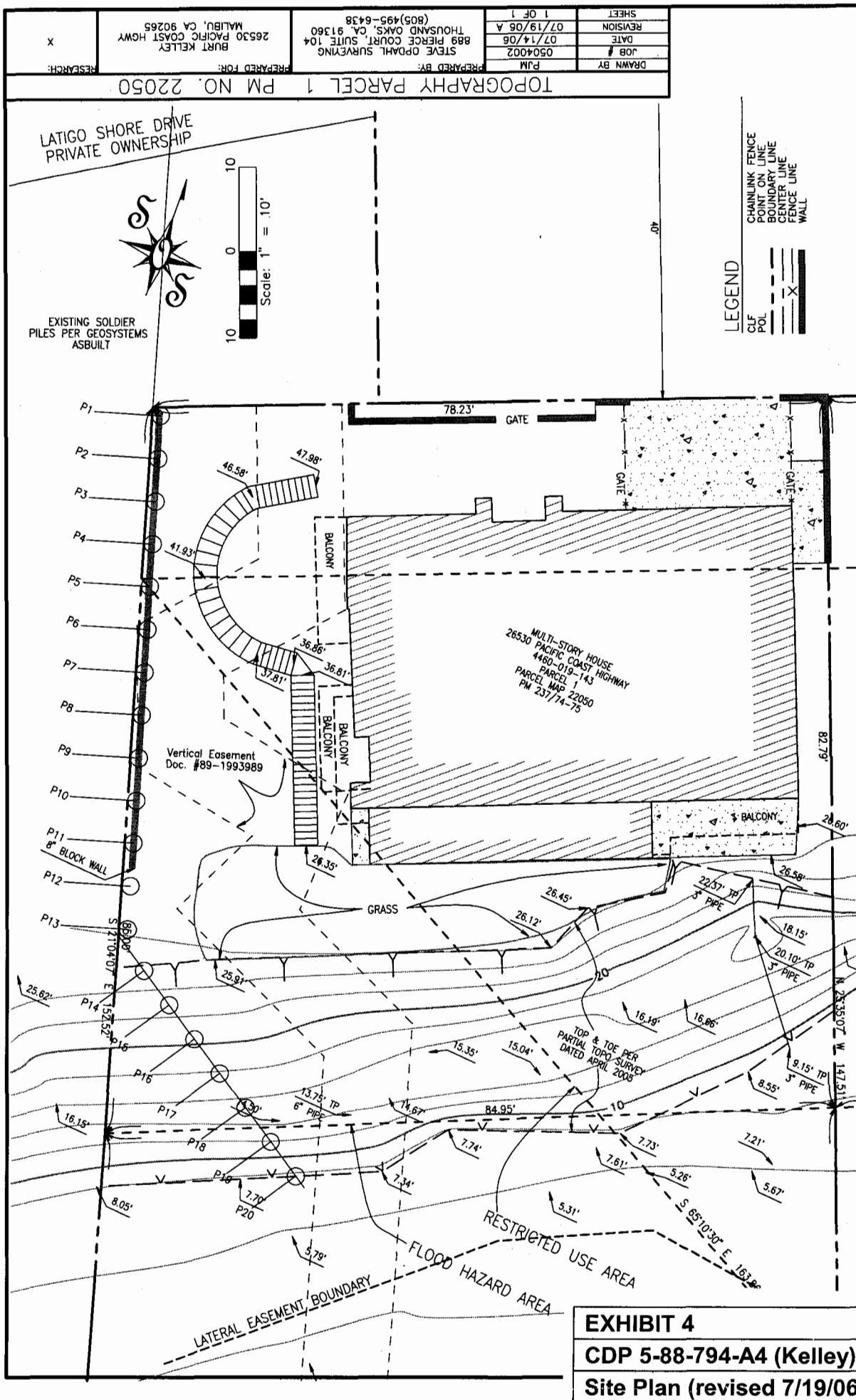
-

*Note: All Locations Approximate.
For Illustrative Purposes Only.*



Source: California C
Base Map Source: L

Recorded Public Access Easements



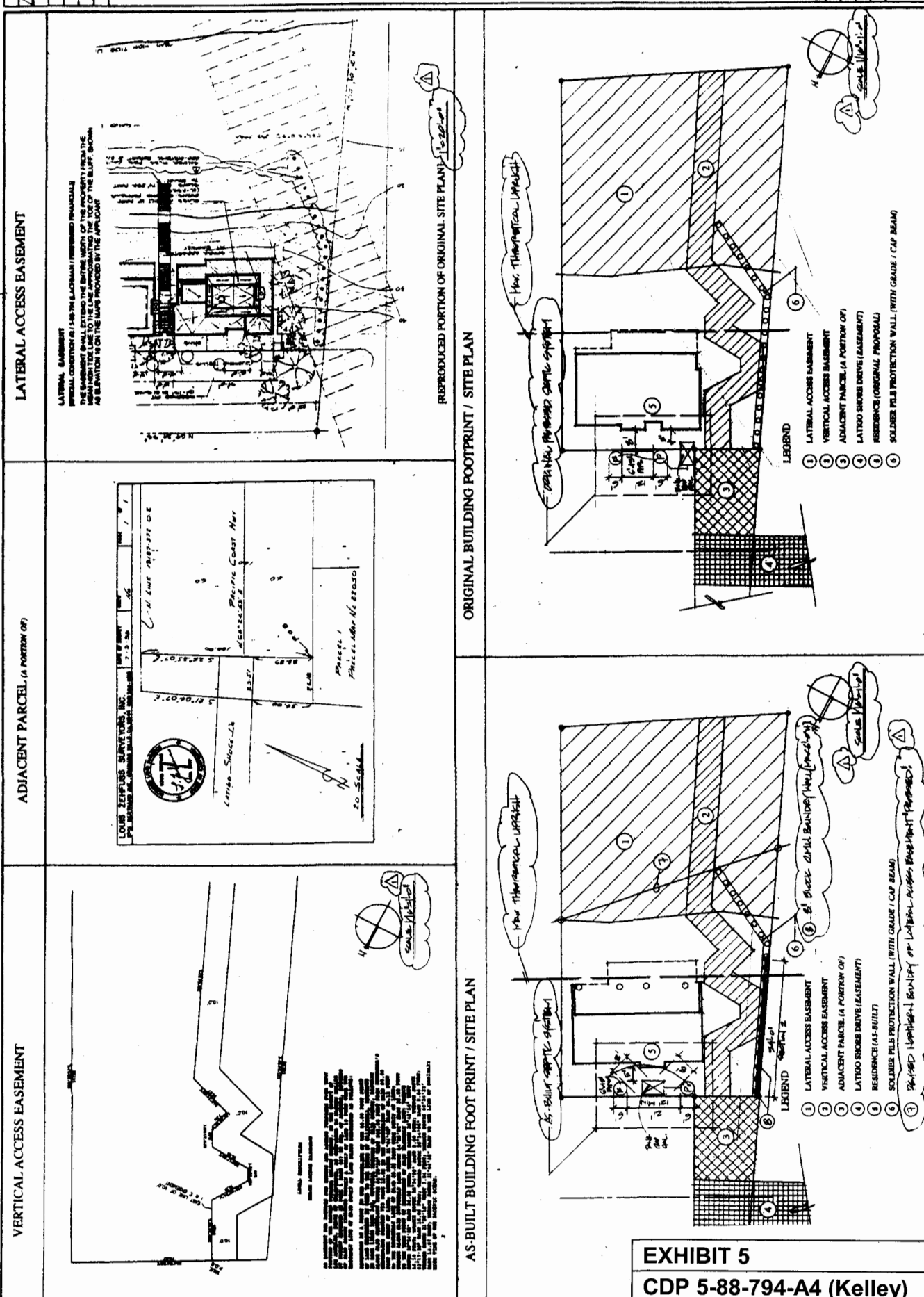


EXHIBIT 5

CDP 5-88-794-A4 (Kelley)

Site Plan (previously proposed)

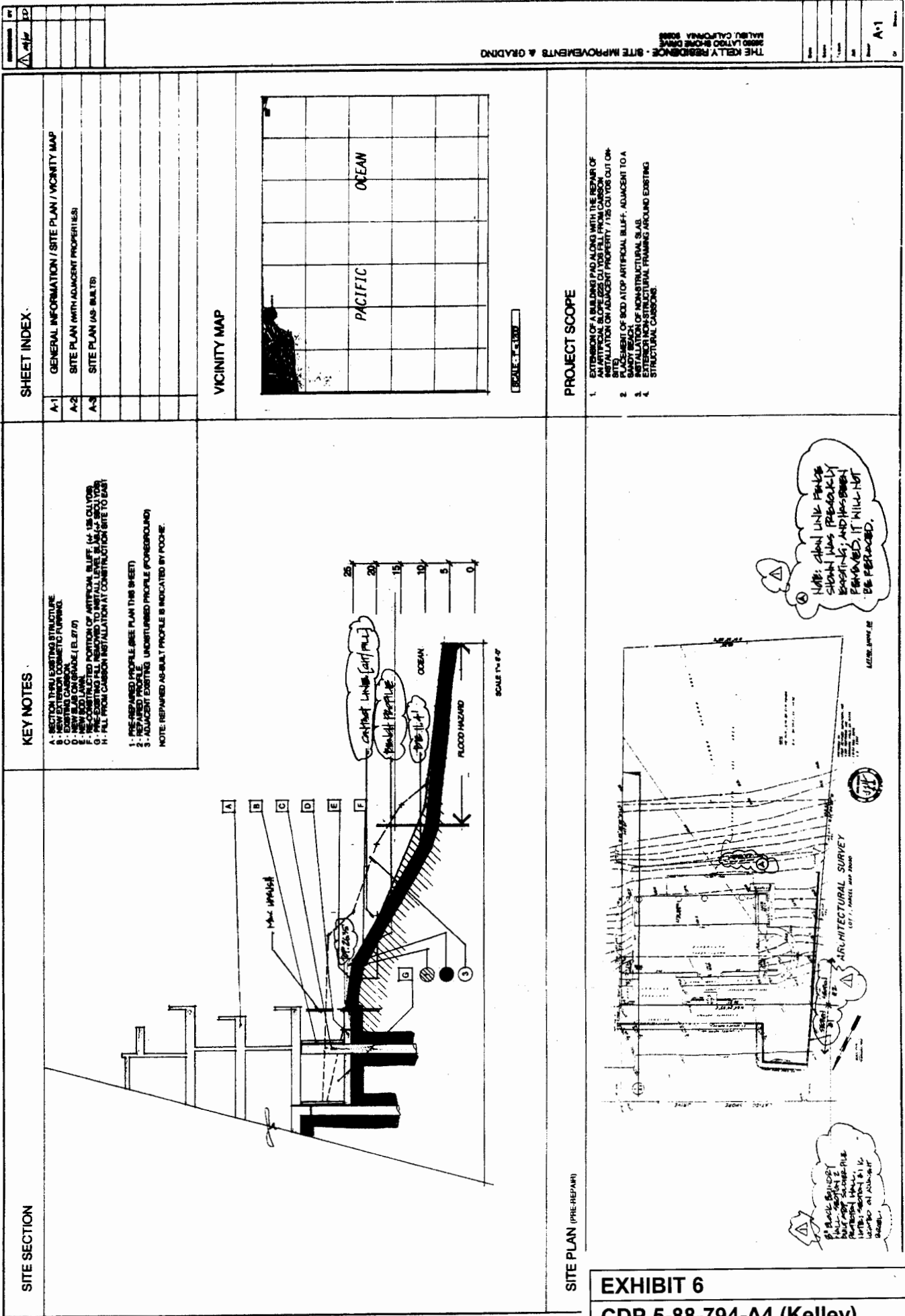


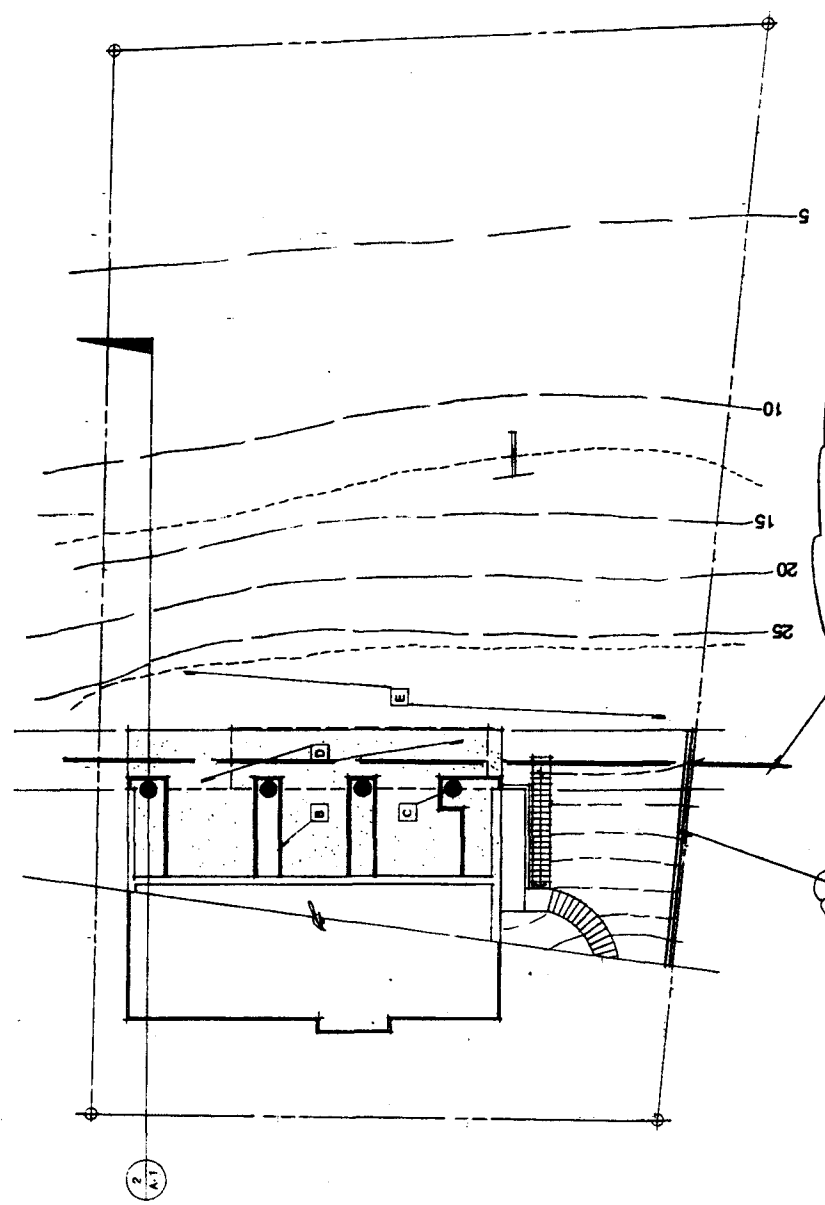
EXHIBIT 6
CDP 5-88-794-A4 (Kelley)
Site Plan/Cross Section

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
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THE KELLEY RESIDENCE - SITE IMPROVEMENTS
 3880 LATO INCH DRIVE
 MALIBU CALIFORNIA 90265

A-3

SITE PLAN (AS BUILT WITH SITE IMPROVEMENTS)



Handwritten note: "This is the area that is to be improved with site improvements." with an arrow pointing to the curved dashed lines area.

- KEY NOTES**
- A. EXISTING STRUCTURE
 - B. NEW EXTERIOR COSMETIC FLOORING (2x4 STUDS + 3/4" PLYWOOD)
 - C. NEW EXTERIOR COSMETIC FLOORING (2x4 STUDS + 3/4" PLYWOOD)
 - D. NEW EXTERIOR COSMETIC FLOORING (2x4 STUDS + 3/4" PLYWOOD)
 - E. NEW EXTERIOR COSMETIC FLOORING (2x4 STUDS + 3/4" PLYWOOD)
 - F. NEW EXTERIOR COSMETIC FLOORING (2x4 STUDS + 3/4" PLYWOOD)
 - G. PRE-EXISTING PORTION OF INTERIOR (14' x 12' x 10')
 - H. PRE-EXISTING PORTION OF INTERIOR (14' x 12' x 10')
 - I. PRE-EXISTING PORTION OF INTERIOR (14' x 12' x 10')
 - J. PRE-EXISTING PORTION OF INTERIOR (14' x 12' x 10')
 - K. PRE-EXISTING PORTION OF INTERIOR (14' x 12' x 10')
 - L. PRE-EXISTING PORTION OF INTERIOR (14' x 12' x 10')
 - M. PRE-EXISTING PORTION OF INTERIOR (14' x 12' x 10')
 - N. PRE-EXISTING PORTION OF INTERIOR (14' x 12' x 10')
 - O. PRE-EXISTING PORTION OF INTERIOR (14' x 12' x 10')
 - P. PRE-EXISTING PORTION OF INTERIOR (14' x 12' x 10')
 - Q. PRE-EXISTING PORTION OF INTERIOR (14' x 12' x 10')
 - R. PRE-EXISTING PORTION OF INTERIOR (14' x 12' x 10')
 - S. PRE-EXISTING PORTION OF INTERIOR (14' x 12' x 10')
 - T. PRE-EXISTING PORTION OF INTERIOR (14' x 12' x 10')
 - U. PRE-EXISTING PORTION OF INTERIOR (14' x 12' x 10')
 - V. PRE-EXISTING PORTION OF INTERIOR (14' x 12' x 10')
 - W. PRE-EXISTING PORTION OF INTERIOR (14' x 12' x 10')
 - X. PRE-EXISTING PORTION OF INTERIOR (14' x 12' x 10')
 - Y. PRE-EXISTING PORTION OF INTERIOR (14' x 12' x 10')
 - Z. PRE-EXISTING PORTION OF INTERIOR (14' x 12' x 10')

EXHIBIT 7
 CDP 5-88-794-A4 (Kelley)
 Floor Plan for "Underfloor Area"



Cox, Castle & Nicholson LLP
2049 Century Park East, 28th Floor
Los Angeles, California 90067-3284
P 310.277.4222 F 310.277.7889

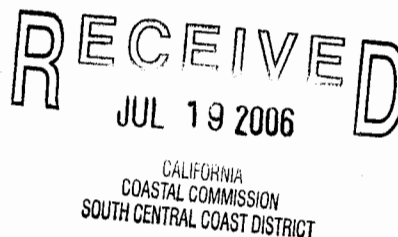
Stanley W. Lamport
310.284.2275
slamport@coxcastle.com

File No. 42866

July 18, 2006

Via E-Mail & U.S. Mail

Mr. Steven Hudson
California Coastal Commission
South Central Coast
89 South California Street
Suite 200
Ventura, CA 93001-2801



Re: **CDP Application No.: 5-88-794-A4**
Modification and Clarification of Project Description

Dear Mr. Hudson:

This letter confirms our telephone conversations regarding the project description for the application referenced above. As we discussed our client is seeking an after-the-fact permit for the following:

1. Approval of the location of the single-family residence 10 feet seaward of the location that was originally approved in CDP 5-88-794.
2. Approval of the 20 below grade soldier piles along the westerly side of the property, as required by the City of Malibu and the County of Los Angeles to protect the property and neighboring properties to the east from the existing landslide located to the west of the soldier piles.
3. Approval of the existing vertical wall constructed on the top of the soldier piles as presently located on the property.
4. Approval of the structural slab, as constructed on the property, and existing framing around the structural caissons. In this regard, our client is requesting that condition 7 of CDP 5-88-794 be modified to allow for the retention of this work.
5. Approval of the existing vertical front yard wall as presently located on the property.
6. Approval to re-slope the bluff at the rear of the property to the string line set back, consistent with building and safety requirements. Our client is not seeking approval retain the lawn. Our client is proposing to remove the lawn area as part of the remedial.

EXHIBIT 8

CDP 5-88-794-A4 (Kelley)

**Letter from Applicant dated 7/18/06
revising Project Description**

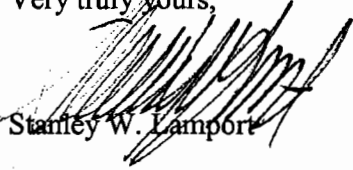
Mr. Steven Hudson
July 18, 2006
Page 2

7. Approval of the railroad tie stairway on the westerly side of the property in its present location. The applicant would agree to reconfigure the stairway to conform to the alignment of the easement in the event the easement is opened for public use.

Our client is withdrawing his request to vacate the vertical easement and relocate the lateral easement at this time, without prejudice to his applying to address these issues in the future, should it become necessary. As we discussed, there are a number of access issues involving numerous properties along Latigo Shore Drive (including our client's property), which are part of ongoing discussions with Access for All and a number of other property owners. A resolution of the easement issues on this property will depend to a great extent on the outcome of those discussions, which may include an agreement that Access for All will abandon the vertical easement on the property (although it is too soon to know for sure). In addition, our client's survey shows that the soldier piles are not located in the lateral easement, which, at least for now, obviates the need to request a relocation of that easement.

Furthermore, as we discussed, the existing walls and improvements on the "adjacent parcel" (sometimes referred to as the "Parachute Parcel") is not part of this application. As you know, the owner of the adjacent parcel is working with staff to resolve the disposition of the improvements on that property, which, as we discussed, is also dependent on the resolution of the multi-party easement discussions that are currently ongoing.

Very truly yours,



Stanley W. Lamport

SWL/rl

42866\1223548v4

cc: Mr. Bert Kelley
Aamir Raza, Esq.

DELTA

ENGINEERING SERVICES

1753 17th STREET
Santa Monica, CA. 90404
TEL. (310) 581-0737 FAX. (310) 581-0738

Engineering Report

For

Existing concrete slab

Located at

26530 Latigo Shore Drive
Malibu, CA 90265

RECEIVED
JUL 14 2006
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

EXHIBIT 9

CDP 5-88-794-A4 (Kelley)

Engineering Report for Underfloor
Area (submitted 7/14/06)

Mr. Bert Kelly
26530 Latigo Shore Dr.
Malibu, CA 90265

SUBJECT
Engineering evaluation report
For the Cantilever portion of the
existing Concrete slab on Grade at:
26530 Latigo Shore Dr.
Malibu, CA 90265

Dear Mr. Kelly:

As requested, a study was performed on the subject property for the purpose of evaluating the adequacy of the 8 feet portion (extended behind the existing grade beam) of the existing concrete slab on grade.

This study was based on the information provided by you and/or your contractor, pictures that were provided by you, and our site visit (no testing was done to the existing slab).

SITE CONDITION

Based on the information given, the existing concrete slab is 10 inch thick with #7 rebar At 10 inch on center each way. This slab, extend approximately 8 feet at front of the existing concrete piles and approximately 17 feet toward the back.

April 21, 1999

Mr. Bert Kelly
26530 Latigo Shore Dr.
Malibu, CA 90265

**RE: CONCRETE SLAB ON GRADE
AT 26530 LATIGO SHORE DRIVE, MALIBU
JOB # 99121**

Dear Mr. Kelly:

We have reviewed the existing condition and structural integrity of concrete slab on grade at above referenced project.


Based on the information you and/or your contractor have provided, the existing concrete slab is 10 inch thick and reinforced with # 7 rebar at 10 inch on center in each direction. This slab, extend approximately 8 feet at front of the existing concrete piles and 17 feet toward the back.

In case of the shoreline washout, which will be limited to the extent of the existing concrete columns and grade beam, the existing concrete slab is capable of overhanging 8 feet without structural failure or excessive deflection. In our analysis of the existing slab reinforcing were assumed to be in the middle of the slab, concrete strength of 2500 PSI with grade 60 steel were used. In deflection analysis in lieu of cracked section moment of inertia 50% of the section inertia was used. (See attached calculations).

We conclude the existing concrete slab on grade is safe and in sound structural condition.

If you have any questions or comments please do call us.

Sincerely,


Max Falamaki, SE
President



cc: 99121.re1



MAX FALAMAKI
STRUCTURAL ENGINEERS

CLIENT: MR. BERT KELLY

PROJECT: CONCRETE SLAB ON GRADE

LOCATION: 26530 LATIGO SHORE DR., MALIBU

SHEET 1 OF 1

JOB NO.: 99121

DATE: APR 99

ENGINEER: MFA

CHECK SLABS:

$$10" \quad DL = \frac{10}{12} (150) = 125 \text{ psf}$$

$$LL = 40 \text{ psf}$$

$$UL = 1.4(125) + 1.7(40) = 243 \text{ psf}$$

TRY 12" STRIP:

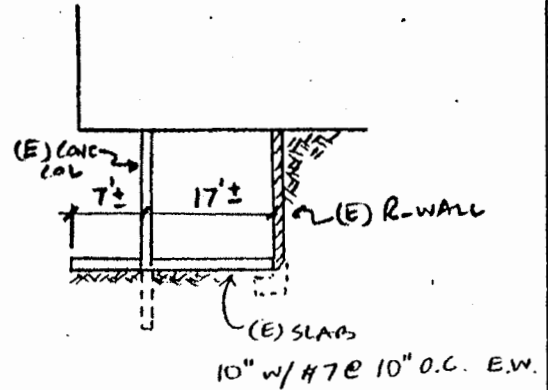
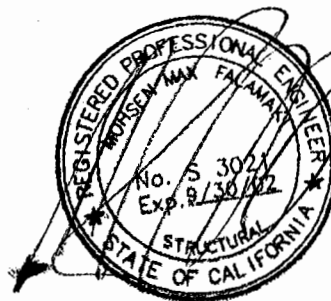
$$M = \frac{243(7)^2}{2} = 5953 \text{ ft-lb} \approx 6 \text{ K}$$

$$b = 12" \quad d = 5" \quad f'_c = 2500 \text{ psi} \quad f_y = 60 \text{ ksi}$$

$$A_{s \text{ req}} = .28 \text{ in}^2/\text{ft} < \frac{0.6}{.83} = 0.72 \text{ in}^2/\text{ft} \quad \therefore \checkmark$$

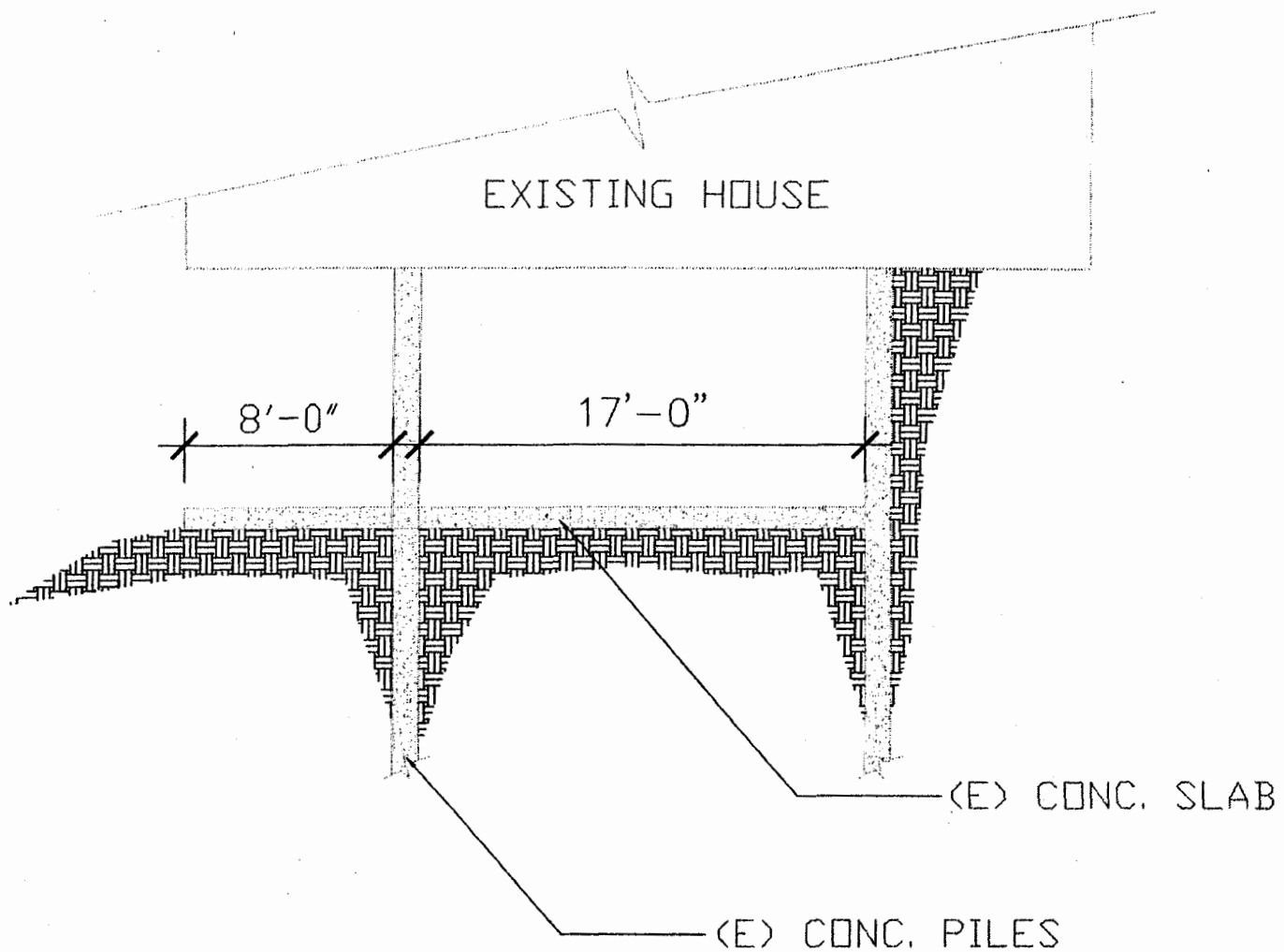
$$A_{s \text{ min}} = .0018(10)(12) = .22 \text{ in}^2/\text{ft} < 0.72 \text{ in}^2/\text{ft} \quad \therefore \checkmark$$

$$\Delta = \frac{165(7)^4(1728)}{8(57000)\sqrt{2500}\left(12 \times \frac{10^3}{12}\right)^{1/2}} = .06" \approx \frac{1}{1400} < \frac{1}{240} \quad \therefore \checkmark$$



DELTA ENGINEERING SERVICES

1753 17th. STREET, SANTA MONICA, CA 90404

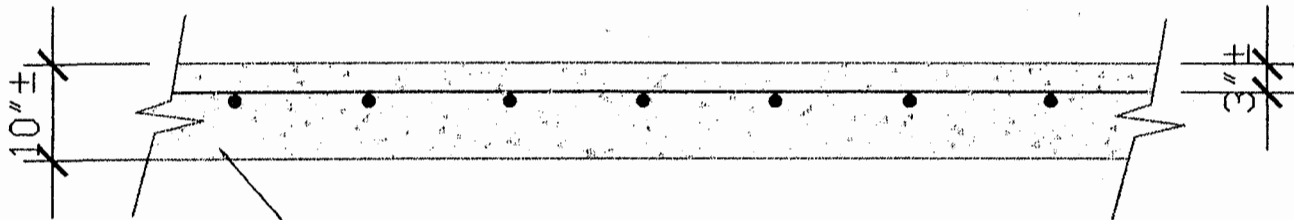


EXISTING COND.

DELTA

ENGINEERING SERVICES

1753 17th. STREET, SANTA MONICA, CA 90404



(E) 10" CONC. SLAB
W/#7 @ 10" O.C. EACH WAY

(E) SLAB SECTION



Pacific Coast Highway

Latigo Shore Drive

Unpermitted Development on
Adjacent Parcel 4460-019-025)

Unpermitted
Side Wall

Unpermitted
Private Stairs

Unpermitted Lawn, Flat
Pad, & Fill Slope

Unpermitted
Underfloor Area

Erosion of Slope that occurred in
2005 Storm Season

Unpermitted Revetment
Removed Pursuant to
Cease and Desist Order
(CCC-05-CD-05)

Original Photograph Copyright (C) 2002 Kenneth Adelman, California Coastal Records Project, www.californiacoastline.org

EXHIBIT 10

CDP 5-88-794-A4 (Kelley)

Aerial Photograph dated 6/9/05